Supreme Court, U.S.
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No. ——

In The

Supreme Court of the United States

CHARLES E. MCCLAIN, SR.
Petitioner

v.

ATTORNEY GRIEVANCE COMMISSION
OF MARYLAND
Respondents

Petition for Writ of Certiorari from
the Maryland Court of Appeals

PETITION FOR WRIT OF CERTIORARI

CHARLES E. MCCLAIN, SR.
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Pro Se

QUESTIONS PRESENTED FOR REVIEW

1. Did the Court err in failing to consider whether the trial judge should have recused himself as a question of due process in the matter for which Petitioner was disbarred from the practice of law, in that the judge had expressed personal attacks against Petitioner in an action in which Petitioner was an expert witness some fifteen years prior.

2. Did the Court err in considering Petitioner's request that (1) the judge be recused and (2) that the subsequent finding of the judge that ignored Petitioner's argument that a cotenant had priority in the purchase of a court ordered partition and sale of real property.

3. Did the Court Err in considering whether Petitioner's right to Equal Protection was violated whereby neither Complainant nor his client were not damaged and received full compensation to which they were entitled when Petitioner and his client were sanctioned by the trial judge.

LIST OF ALL PARTIES TO PROCEEDINGS BELOW

Petitioner (Respondent in the Maryland Court of Appeals)

Charles E. McClain, Sr.

Respondent (Petitioner in the Maryland Court of Appeals)

Attorney Grievance Commission of Maryland

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John Patrick Liteky, Charles Joseph Liteky and Roy Lawrence Bourgeois, Petitioners v. United States 510 U.S. 540; 114 S. Ct. 1147

San Paulo State of The Federative Republic of Brazil v American Tobacco Co., Inc., et al 535 U.S. 229; 122 S. Ct. 1290 (????)

STATE CASES

Miller v. Kirkpatrick 374 Md. 82, 821 A2d. 370 (2003)

FEDERAL STATUTES

28 U.S.C. § 455(a)

STATE STATUTES

Maryland Code of Judicial Conduct, Canon 3, Rule 16-813(D)

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STATEMENT OF JURISDICTION

The Court of Appeals of Maryland issued its opinion on September 8, 2008. The Court's Opinion was final. The Supreme Court possesses jurisdiction under 28 U.S.C. §1254 because this Petition for Writ of Certiorari was filed within ninety (90) days following the Court's Order of September 8, 2008. See Sup. Ct. Rule13.

CONSTITUTIONAL STATUTE

28 U.S.C. §455(a) cited in John Patrick Liteky, *Charles Joseph Liteky and Roy Lawrence Bourgeois, Petitioners v. United States* 510 U.S. 540; 114 S. Ct.1147 (1997) and *San Paulo State of The Federative Republic of Brazil v American Tobacco Co., Inc., et al.* 535 U.S. 229; 122 S. Ct. 1290 (2002).

STATEMENT OF THE CASE

In 1993, Petitioner served as an expert witness for a Plaintiff in a matter providing an expert opinion as to the value of a residential property in his capacity as a real estate broker in the matter. Herman Dawson, Esquire, was counsel for the Defendant. The domestic matter was Prince George's County Circuit Court Case No.CAD93-18641.

When the hearing was complete, a third party asked the Petitioner "What is there between you and Herman Dawson". I responded nothing to my knowledge. Petitioner was warned by this individual to "Watch your back", as it pertained to Dawson. An attempt to obtain an Affidavit from this party has been unsuccessful due to their reluctance to be involved in these proceedings.

Footnote: Petitioner passed the bar examination in 1985 but was not admitted to practice until December, 1993. (App. 13)

He had not been admitted because he was accused of lying on a deposition in a civil matter as a personal injury Plaintiff. Petitioner denied the accusation and was represented by four attorneys but was not successful until he did his own investigation and discovered that the deposition was notarized illegally. When Petitioner drafted his own motion for admittance to the Bar, revealing to the Court what had transpired, he was admitted to the Bar within ten (10) days thereafter. The motion and approval is stored in the court's archives which contains documents dating back to the 1800's.

Conviction of the misdemeanor could have led to two(2) year incarceration. The occurrence led to inspiration of a novel and movie titled "The Deposition"
End Footnote

On October 17, 2002, when Petitioner appeared before the former counsel for the defendant, now Judge Dawson, Dawson stated, on the record, that he and Judge Murphy both agreed that nothing that Petitioner submitted to the court was proper. (Judge Murphy was Chief Judge of the Maryland Court of Special Appeals). Thereafter, Petitioner made sure that all pleadings he submitted to the court were in proper form including memorandums of law.

In another appearance before Judge Dawson, Petitioner was sanctioned in the amount of $4500 (four thousand five hundred dollars) in a civil matter.

Footnote; On September 2, 2005, in Attorney Grievance Commission of Maryland v. Charles E. McClain, SR., CAE 04-26727, Assistant Bar Counsel, Dolores Ridgell, took the deposition of Petitioner relating to the complaint for which Petitioner was disbarred. The sequence is as follows, which is in the deposition. Questions and answers regarding Judge Dawson were as follows:

> All right. Now, you've indicated that Judge Dawson has - bears some animosity to you, it that correct.
> A. Yes.
> Q. What was that incident?
> A. It was an incident where I appeared as an expert witness.
> Q. Okay.
> A. In a domestic matter concerning real estate.
> Q. Okay.
> A. The attorney was Linda Spivak.
> Q. Linda?
> A. Linda Spevak.
> Q. All right. And was Judge Dawson a judge at the time ?
> A. No.
> Q. Was he the attorney for the opposing party?
> A. Yes.
> Q. All right. And what did he do that made you think that he held a grudge against you?
> A. He did when I was informed of the effect of his actions against me at the time. Unknowing to me, it was related to me. What do you have against Judge Dawson? I mean, what do you have against Herman Dawson.
> Q. Okay.
> A. Nothing. We're both in the same bar association. We regard each other with pleasantries. Their response specifically was to watch your back.
> Q. Okay. And you think that was because you

testified as an expert against - in a case that he was the opposing counsel in, correct?
A. Yes, because my investigation of the property caused me to surmise that the property was not worth what was claimed, and it was not in the condition that was claimed. In that trial, I was qualified as an expert.
The property was located on Afton Street in Capitol Heights, I'm sorry, Bradbury Heights.
Q. All right. Who told you to watch your back?
A. Linda Spivak.
Q. All right.
A. She is prepared to be a witness in this matter on my behalf.
Pages 73 and 74 of the deposition.

Q. In the second complaint that you filed against Real Investments and Rossi and Mr. Hennings, that went before Judge Schiff, correct?
A. Yes.
Q. All right. And did you find any fault with the manner in which Judge Schiff treat you?
A. There was a motion for sanctions. He said no.
Q. All right. So your answer is that you don't have any problem with the way Judge Schiff treat you?
A. Correct.
Page 76 of the deposition.

Q. Other than Judge Dawson, have you been before any other judge who has ridiculed you?
A. NO. There was a motion for sanctions in the federal matter, and the judge said no. Judge Dawson is the only person who has ever required me to pay sanctions and that ever riddled, disgraced me, and led me to believe that.
Q. Did you pay the $4,500.00?
Q. Yes.
Q. When did you pay that?
A. Within the time that was allocated.

Page 78 of the deposition.
End footnote.

In a matter before the court in 2005, the Petitioner represented a Defendant in a court ordered petition and sale of a home held in co-tenancy, Civil Action 03-14856. In his appearance before the court he argued that the procedure was flawed because the trustee had not filed an appraisal or bond, as required in the court-ordered procedure to sell partitioned property, (App. 42), Petitioner expressed his concern that this failure to follow procedure would unduly prejudice Petitioner and his client. (App.64-65). In addition, the issue as to whether a joint tenant had the right to purchase the equity of a co-tenant was presented and dismissed as irrelevant. Judge Dawson refused recusal. (App. 68).

Petitioner filed an appeal to the Maryland Court of Special Appeals which affirmed Judge Dawson's findings. Thereafter, opposing Counsel filed a complaint against Petitioner with the Attorney Grievance Commission of Maryland. Following a peer review, the Grievance Commission filed its complaint against Petitioner in the 7th Judicial Circuit Court of Prince George's County, Maryland. The trial judge found against Petitioner on most grounds but rendered mitigating factors, stating that: "Respondent did not act with dishonest or selfish motives, nor with intent to hurt Ms. Johnson." Maryland Court of Appeals Opinion. (App. 27).

Thereafter, the Court of Appeals disbarred Petitioner. A minority of judges preferred indefinite suspension. (App. 32).

REASONS FOR GRANTING WRIT

Petitioner Charles E. McClain, Sr. seeks this Court's review of the Opinion issued by the Court of Appeals of Maryland. (App. 7).

I. Introduction

The questions posed by this Petition are;

1. Whether the court erred in failing to consider whether the trial judge should have recused himself as a question of due process in the matter for which Petitioner was disbarred from the practice of law, in that the judge had expressed personal attacks against Petitioner in an action in which Petitioner was an expert witness some fifteen years prior.

2. Whether the court erred in considering Petitioner's request that (1) the judge be recused and (2) that the subsequent finding of the judge that ignored Petitioner's argument that a cotenant had priority in the purchase of a court ordered partition and sale of real property.

3. Whether the court erred in counseling Petitioner's right to Equal Protection was violated whereby neither Complainant nor his client were not damaged and received full compensation to which they were entitled when Petitioner and his client were sanctioned by the trial judge.

II. Factual Background

Recusal in the Maryland Statute lists "recusal" under the Code of Judicial Conduct, Canon 3, Rule 16-813(D). (App 6).

Recusal in the federal statues is reflected in 28 U.S.C. §455(a) which includes:

(a) any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;..(App. 1)

Quoted in *John Patrick Liteky, Charles Joseph Liteky and Roy Lawrence Bourgeois, Petitioners v. United States* 510 U.S. 540;114 S. Ct.1147 (1997) and *San Paulo State of The Federative Republic of Brazil v. American Tobacco Co., Inc., et al.* 535 U.S. 229; 122 S. Ct. 1290 (2002).

The facts reveal that Petitioner requested that Judge Dawson recuse himself : if sanctions were to be imposed, insofar as Judge Dawson had sanctioned Respondent "in just the recent past". (App. 1).

Petitioner and Judge Dawson were well aware

that in 1993, when Dawson was the attorney for the Defendant, in the matter CAD93-18541, and Petitioner served as an expert witness for Plaintiff's Counsel, and following the adjudication, Plaintiff's Counsel inquired of Petitioner "What is there between you and Herman Dawson. My response was that I knew of nothing. The third party's response was to advise Petitioner to "Watch his back".

This was Petitioner's first knowledge of Judge Dawson's express bias, as indicated through a reliable source. *Liteky* and *San Paulo* would certainly apply in that, 28 U.S.C. §455(a) "Where he has personal bias or prejudice concerning a party..."

Petitioner made the Court aware that trustee violated the Court's Order, and posted no bond as claimed Respondent made known to his Counsel the earlier statement by the presiding judge but failed to make it known to the Court or to the Attorney Grievance Commission.(App. 42).

The Opinion included language that Petitioner filed a line stating that settlement had taken place. However, said letter including language: According to Ms. Davis, your were out of the country and would contact her to view the details of the settlement upon your return to Maryland". Clearly, Petitioner was acting on information provided to him by the settlement Company Old Line Title and Escrow.

Justice would have it that Petitioner did not deliberately make a misrepresentation to the Court as a basis for the alleged violation of Rule 8.4©) - Misconduct....fraud, deceit or misrepresentation.

Neither the complainant, opposing counsel Kelting, nor his client, Plaintiff Johnson below, suffered monetary or other damages, i.e. no harm. Plaintiff below received her full complement of interest on her judgment.

III. Conclusion and prayer for relief

In *Liteky*,, the Court held that:

(1) extrajudicial source doctrine applies to recusal motions under the bias and prejudice nor sufficient condition for recusal; (2) extrajudicial source for the bias is not necessary condition for recusal nor sufficient condition for recusal; (3) bias and prejudice connote a favorable or unfavorable disposition or opinion that is somehow wrongful or inappropriate; and (4) judge's conduct at prior trial involving one defendant and during the trial of defendants did not show bias and prejudice. Being that the recusal by Petitioner was made in open court, and extrajudicial source for bias is not necessary condition for recusal, according to

Liteky; and being the alleged bias and prejudice applies in this matter, the trial judge should have recused himself for justice to have been fairly administered.

In *Miller v. Kirkpatrick,* 374 Md. 374 82, 821 a.2d 370, (2003), a case the court held that the motion for recusal was untimely. However, in dictum, the court cited *Braxton v. Farber,* 911 Md. App. 391, 604 A.2d 543 (1992) which held that:

a party wishing to make a proper record of

perceptually prejudicial conduct by a judge during trial, and especially conduct not inherently capable of being captured through the medium of a printed transcript, nonetheless must create a record in which: (1) facts are set forth in a reasonable detail sufficient to show the purported bias of the trial judge; (2) the facts in the support of the claim must be made in presence of the opposing counsel and the judge who is the subject of the charges; (3) counsel must not be ambivalent in setting forth his or her position regarding the charges; and (4) the relief sought must be as stated with particularity and clarity. 91 Md. App. At 408-09, 604 A.2d at 553.

The facts disclose that Petitioner has met the requirements of *Braxton* by requesting the recusal of the trial judge in open court, given the reasons why, and in the presence of opposing counsel who did not object to the recusal request.

The state court judge must be held to the same standard as federal judges to insure due process in U.S. Courts. The Maryland Judge, when requested to recuse himself, must be held to the same standards of the federal recusal statute. Once requested to recuse himself, he should have disqualified himself based upon personal bias toward Respondent. From the time that he refused to recuse himself, the proceedings were tainted and due process failed. Petitioner should not have been subject to disbarment, thus taking away his livelihood.

Though not a precedent, the article by Professor Sherrilyn Hill addresses recusal as fairness by due process:

"As the Supreme Court famously said nearly 80 years ago in *Offutt v. Unites States*, justice must satisfy the appearance of justice." Also: "Due Process protects not only litigants".

See "Give Due Process Its Due", JD Fall 2008 Professor Sherrilyn Hill.pp41-41.

This would further prove that not only did Petitioner not receive due process, but neither did his client, Mr. Hamilton. This would apply to necessary recusal of judges, in the modern judicial sense, and in this matter.

The parties below were not injured nor did they suffer damages. Had the judge recused himself, perhaps justice would have transpired, and the sale would have commenced as ordered according to Rules of the court. Being that the judge's failed to recuse himself, justice was not rendered, resulting in the disbarment of Respondent.

But for the judge's refusal to recuse himself, and the trustee's failure to fulfill the judge's order of sale, the trustee's failure to follow statutory and proper procedure;

A. Petitioner's client would have completed transfer of the property;

B Petitioner would have not have misconstrued Judge Dawson's words :and "if you dislike a person" (App. Page 85) And "too close to the matter"(App. Page 89);

C. no appeal would have been necessary for Petitioner to be sanctioned};

D. no sanctions would have occurred against Petitioner and his client; and,

E. there would have been no disbarment of Petitioner.

Petitioner is a 72 year old African American disabled Veteran who loves his country and respects its laws. Petitioner did not register a complaint for the injustice perpetrated against him, causing him to be denied the privilege to practice law for eight years following his passing the bar examination, for fear of reprisal.

Petitioner experienced a "chilling effect" caused by his experience in the matter which was the basis for his disbarment. Petitioner never had a state of mind to impede justice or to make any misrepresentation before the tribunal.

Petitioner prays for relief from disbarment:

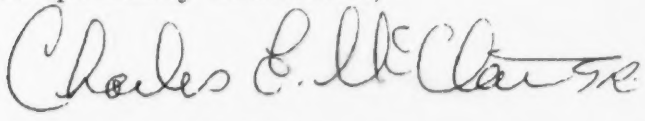
A) based upon violation of his constitutional right to due process supported by Federal and State statutes and the case law cited herein;

B) based upon the appearance of inadequate counsel: "neither Respondent nor his counsel nor Bar Counsel filed any exceptions to the hearing courts findings of fact

or conclusions of law" App. 28; and

C) based upon his inability to practice law having had to endure eight (8) years of loss of livelihood and endurance of shame caused by the crime perpetrated against him in the Maryland Court system.

Respectfully submitted,



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Certificate of Service

I HEREBY CERTIFY, that three(3) copies of the foregoing PETITION FOR WRIT OF CERTIORARI were mailed, first class prepaid postage, this 30th day of January, 2009 to

Melvin Hirshman, Esq.
Bar Counsel, Attorney Grievance Commission of Maryland
100 Community Place, Suite 3301
Crownsville, Maryland 21032-2027
Ph: 410-514-7051

Charles E. McClain, Sr.

TITLE 28 > PART I > CHAPTER 21 > § 455

Disqualification of justice, judge, or magistrate judge How Current is This?

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or

minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

(c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

(1) "proceeding" includes pretrial,

trial, appellate review, or other stages of litigation;

(2) the degree of relationship is calculated according to the civil law system;

(3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

(i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a

"financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(e) No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

(f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate judge, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome),

disqualification is not required if the justice, judge, magistrate judge, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

App. 6

RULE 16-813. MARYLAND CODE OF JUDICIAL CONDUCT

CANON 3

D. Recusal

(1) A judge shall recuse himself or herself from a proceeding in which the judge's impartiality might reasonably be questioned, including an instance when:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer or extra-judicial knowledge of a disputed evidentiary fact concerning the proceeding;

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

Attorney Grievance Commission of Maryland
v. Charles E. McClain, Sr., AG No. 23,
September Term, 2007

HEADNOTE: Disbarment is the appropriate sanction for an attorney who knowingly made false statements to the Circuit Court, and relied on those false and misleading statements in a brief submitted to the Court of Special Appeals.

In the Circuit Court for Prince George's County
Case No.: CAE07-20768

IN THE COURT OF APPEALS OF MARYLAND

Misc. Docket AG No. 23
September Term, 2007

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND
v.
CHARLES E. MCCLAIN, SR.

Bell, C.J.
Harrell
Battaglia
Greene
Murphy
Eldridge, John C
(Retired, Specially Assigned)
Raker, Irma S.
(Retired , Specially Assigned)
JJ.

Opinion by Greene, J.
Filed: September 8, 2008

The Attorney Grievance Commission of Maryland, acting through Bar Counsel and pursuant to Maryland Rule 1 6-751(a),1 filed a Petition For Disciplinary or Remedial Action against Respondent Charles E. McClain, Sr. on August 10, 2007. The Petition alleged that Respondent, who was admitted to the Bar of this Court on September 30, 1993, violated Maryland Rules of Professional Conduct ("MRPC") 1.1 (Competence),2 1.7(b) (Conflict of Interest),3 3.1 (Meritorious Claims and Contentions),4 3.2 (Expediting Litigation),5 3.3(a) (Candor Toward the Tribunal),6 4.4(a) (Respect for Rights of Third Persons),7 8.2(a) (Judicial and Legal Officials),8 and 8.4(c) & (d) (Misconduct) 9 in his representation of Gustav Hamilton. Pursuant to Maryland Rules 16-752(a)10 and 16-757(c),11 we referred the matter to the Honorable Cathy H. Serrette of the Circuit Court for Prince George's County to conduct an evidentiary hearing and to submit to this Court proposed findings of fact and conclusions of law. On March 10, 2008, Judge Serrette issued findings of fact and conclusions of law, in which she found that Respondent violated MRPC 1.1, 3.1, 3.2, 3.3(a), 4.4, 8.2(a) and 8.4(c) and (d), but not MRPC 1.7(b). Judge Serrette's findings of fact and conclusions of law read inpertinent part: 12 Respondent cited Dorsey v. Dorsey, 30 Md. 522 (1869) and Kelly v. Gilbert, 78 Md. 431 (1894) in support of his argument that a joint tenant should be given a prioritized opportunity to purchase the real property. The Court of Special Appeals ruled that the cases were not applicable. (b) Review by Court of Appeals. (1) Conclusions of Law. The Court of Appeals shall review de novo the circuit court judge's conclusions of

law. (2) Findings of Fact. (A) If no exceptions are filed. If no exceptions are filed, the Court may treat the findings of fact as established for the purpose of determining appropriate sanctions, if any. (B) If exceptions are filed. If exceptions are filed, the Court of Appeals shall determine whether the finding s of fact have been proven by the requisite standard of proof set out in Rule 16-757(b). The Court may confine its review to the findings of fact challenged by the exceptions. The Court shall give due regard to the opportunity of the hearing judge to assess the credibility of witnesses. Md. 175, 184, 946 A.2d 43 7, 443 (2008). As neither party has filed exceptions, we treat the findings of fact as established for the purpose of determining the appropriate sanction, if any. Md. Rule 16-759(b); Attorney Grievance Comm'n v. Elmendorf, 404 Md. 353, 360, 946 A.2d 542, 54 6 (2008).

Background

On July 13, 2003, Barbara Johnson, through her attorney, Todd Kelting, Esquire, filed a partition action against Gustav Hamilton in the Circuit Court for Prince George's County seeking the sale of jointly owned real property. The court entered an Order of Default on November 18, 2003 and subsequently entered judgment against Mr. Hamilton. On May 21, 2004, the court ordered that the real property be sold, that the first $25,580.62 of proceeds be distributed to Ms. Johnson, and that any remaining proceeds be divided equally between the parties. In an Order dated June 7, 2004, the court appointed Ade Awojobi as Trustee to sell the property pursuant to Maryland

Rule 14-303. Mr. Hamilton 's prior counsel filed an unsuccessful Motion to Vacate.

[1] Maryland Rule 16-751(a) provides in pertinent part:

(a) Commencement of disciplinary or remedial action. (1) Upon approval of [the Attorney Grievance] Commission. Upon approval or direction of the [Attorney Grievance]
Commission, Bar Counsel shall file a Petition for Disciplinary or Remedial Action in the Court of Appeals.

[2] MRPC 1.1 provides:

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

[3] MRPC 1.7(b) provides:

(b) Notwithstanding the existence of a conflict of interest under paragraph (a), a lawyer may represent a client if:
(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law; (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and (4) each affected client gives informed consent, confirmed in writing.

[4] MRPC 3.1 provides:

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes, for example, a good faith argument for an extension, modification or reversal of existing law. A lawyer may nevertheless so defend the proceeding as to require that every element of the moving party's case be established.

[5] MRPC 3.2 provides:

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

[6] MRPC 3.3(a) provides:

(a) A lawyer shall not knowingly:
(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;
(3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

[7] MRPC 4.4(a) provides:

In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that the lawyer knows violate the legal rights of such a person.

[8] MRPC 8.2(a) provides:

A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

[9] MRPC 8.4(c) & (d) provide:

It is professional misconduct for a lawyer to:
(c) engage in conduct involving dishonesty, fraud , deceit or misrepresentation;
(d) engage in conduct that is prejudicial to the administration of justice;

[10] Maryland Rule 16-752(a) states:

(a) Order. Upon the filing of a Petition for Disciplinary or Remedial Action, the Court of Appeals may enter an order designating a judge of any circuit court to hear the action and the clerk responsible for maintaining the record. The order of designation shall require the judge, after consultation with Bar Counsel and the attorney, to enter a scheduling order defining the extent of discovery and setting dates for the completion of discovery, filing of motions, and hearing.

[11] Maryland Rule 16-757(c) states in pertinent part:

(c) Findings and conclusions. The judge shall prepare and file or dictate into the record a statement of the judge's findings of fact, including findings as to any evidence regarding remedial action, and conclusions of law.

[12] Respondent cited Dorsey v. Dorsey, 30 Md. 522 (1869) and Kelly v. Gilbert, 78 Md. 431 (1894)

in support of his argument that a joint tenant should be given a prioritized opportunity to purchase the real property. The Court of Special Appeals ruled that the cases were not applicable.

Findings of Fact

The facts underlying the alleged violations are, for the most part,undisputed. Respondent admitted all of the facts set forth in Petitioner's Request for Admission of Facts and Genuineness of Documents, and the Court of Special Appeals issued an unreported decision following Respondent's appeal in the underlying case.

Respondent was admitted to the Bar of Maryland on September 30,1993 and maintains a law office in Prince George's County. Respondent was also admitted to the Bar of the District of Columbia. Additionally, he has been a licensed real estate broker and developer in Maryland since 1968, and the broker for his own company, Geoplex Realty, since 1999.

On September 13, 2004, Respondent entered

his appearance as Mr. Hamilton's counsel. Respondent thereafter entered into an agreement with his client to act as the broker for the purchase of the real property that was the subject of the partition action in which Respondent was counsel for Mr. Hamilton. The agreement provided that Respondent, through Geoplex Realty, would receive half of the commission resulting from the sale. The commission was to be paid in lieu of attorney's fees.

Upon entering the case, Respondent filed a Motion to Set Aside and/or Vacate Default Judgment knowing that a previous Motion to Vacate Default Judgment had been denied. Opposing counsel, Todd Kelting, notified Respondent, via letter, that he did not deem the Motion to Set Aside and/or Vacate Default Judgment to be legally justified. On September 20, 2004, Ms.Johnson filed her first Request for Sanctions pursuant to Maryland Rule 1-341. On September 24, 2004, the Trustee filed a Motion to Compel Sale of the Property. These matters came before the trial court on Oct. 22, 2004. During the hearing, Respondent requested that his Motion to Set Aside and/or Vacate Default Judgment be considered a request for reconsideration. He further asked that Judge Dawson recuse himself from the case if sanctions were to be imposed, insofar as Judge Dawson had sanctioned Respondent "in just the recent past." Judge Dawson denied the recusation request, the Motion to Set Aside Default Judgment, and the oral motion to consider the Motion to Set Aside as a motion for reconsideration. He deemed the Motion to Set Aside and/or Vacate Judgment to be without basis and found that Respondent had filed

the motion as a tactic to stall the proceedings. Respondent and Mr. Hamilton were jointly and severally sanctioned.

On November 1, 2004, Respondent filed a Motion to Alter or Amend Judgment and asked the court to compel the Trustee to sell the property in question to Mr. Hamilton. Respondent argued that the case law was unclear as to Mr. Hamilton's rights as a joint tenant, but proffered that, "Hamilton is entitled by right, as joint tenant, to settlement with Johnson if able to do so, prior to any third party purchase."[12] On November 5, 2004, Respondent filed a Motion to Stay Proceedings Below in the Court of Special Appeals. On November 8, 2004, Ms. Johnson filed a second Request for Sanctions Pursuant to Maryland Rule 1-341 asserting that Respondent's tactics were dilatory, meritless and designed to impede Ms. Johnson's statutory right to sell the property. Ms. Johnson opposed the Motion to Alter and Amend Judgment and requested reasonable attorneys' fees. In response, Respondent filed a Request for Sanctions Pursuant to Maryland Rule 1-341, asserting that Mr. Hamilton could purchase the property at the appraised value if given the opportunity to refinance and that he should not have to match a higher third party offer.

In the meantime, Respondent continued to engage in negotiation s with the Trustee. He entered into a contract to close on the property by November 24, 2004. The Trustee granted two extensions, but ultimately cancelled the contract because Mr. Hamilton failed to obtain financing. Ms. Johnson filed

an Emergency Motion for Appropriate and Expedited Relief asserting that Respondent's delay tactics had prevented the Trustee from closing with third party purchasers. On December 17, 2004, Respondent filed an Emergency Motion to Allow Respondent Priority to Settle with Trustee or to Stay Transfer Title to Third Party Purchaser. The property had been appraised at $228,000.00, but the Trustee received offers as high as $259,000.00. Mr. Hamilton could not match the higher offers.

On January 2, 2005, in response to charges that Respondent was preventing the sale of the property, Respondent filed a Motion for Trustee to Provide Appraisal. Respondent asserted that the delay in selling the property was due to the Trustee's failure to post a bond and provide an appraisal per Maryland Rule 14-303. In a motion filed days earlier, Ms. Johnson had requested that Mr. Hamilton be held in contempt for preventing an appraiser from a third-party's prospective mortgagee from entering the property.

On January 25, 2005, after the Trustee had canceled M r. Hamilton's contract, Respondent unilaterally scheduled a "sham" settlement on the property with a mortgage company. Respondent knew that the Trustee was out of the country on the date of "settlement" and that the Trustee had not approved the settlement. Respondent thereafter wrote to the Trustee and filed a Line with the court indicating that Mr. Hamilton had settled.

Judge Dawson heard argument on all

outstanding motions on March 17, 2005. The court determined that Respondent's motions had been pursued in bad faith and without substantial justification and suggested that Respondent had become "too close" to Mr. Hamilton's proceedings. Sanctions were imposed against Respondent and Mr. Hamilton in the amount of $12,230.00 to cover Ms. Johnson's counsel fees.

On March 25, 2007, Respondent sent a letter to Judge Missouri, Administrative Judge for the Circuit Court of Prince George's County, without notice to opposing counsel or the Trustee, asserting that Respondent was precluded from filing appropriate motions regarding the property out of fear of being sanctioned. He concluded: "Please lead me in the proper direction within the confines of your Court so that justice may be done considering the status of this case."

On March 29, 2005, Respondent was notified that the Trustee had sold the property for $259,000.00. On May 3, 2005, the court ratified the sale. The Auditor's Report was entered on July 13, 2005.

Respondent noted an appeal. On September 19, 2005, he filed a brief with the Court of Special Appeals in which he challenged the sale and the sanctions. Respondent's brief misrepresented remarks made by Judge Dawson during the March 17, 2005 hearing, claiming that Judge Dawson had said that the judge was too close to the matter, when to the contrary, Judge Dawson had told Respondent that Respondent might be too close to be objective.

The Court of Special Appeals found that Respondent "misconstrued and twisted" Judge Dawson's words. It further held that the Trustee acted in accordance with his statutory duties, and noted that Respondent's "legal arguments [were] not presented in the context of the facts of this case, nor [did] he make an effort to apply the law, or invoke precedent to bolster his argument." The Court ruled that the Circuit Court had not erred in finding that Respondent violated Maryland Rule 1-341 and did not abuse its discretion in sanctioning Respondent, noting that "the evidence and inferences that can be reasonably drawn from the filing of these motions demonstrate appellant's bad faith and lack of substantial justification." The Court declined to address Respondent's argument that Mr. Hamilton should not have had to pay more than fifty percent (50%) of the equity in the real property insofar as Respondent had relied upon inapplicable law and had failed to present a lucid and substantial argument.

Respondent filed a Motion for Reconsideration on October 25, 2006 and a Petition for a Writ of Certiorari on December 26, 2006. Both were denied.

Conclusions of Law

Maryland Rules of Professional Conduct 1.1 – Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Whether a lawyer has employed the requisite knowledge and skill in a particular matter is determined by considering "relevant factors including the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question."

Respondent's trial performance in the underlying case, though less than cogent or well supported, did not rise to the level of incompetence. Neither lack of preparation nor lack of thoroughness was to blame for the loss of Mr. Hamilton's home. Mr. Hamilton appears not to have had a defense to the sale of the property when Respondent was retained. Mr. Hamilton was nonetheless entitled to representation to ensure his rights were protected . In vigorously attempting to save his client's home, Respondent proffered a theory that a joint tenant is entitled to priority in purchasing the property and entitled to purchase the property for fifty (50%) percent of the appraised value. In pursuing this theory, Respondent relied upon inapplicable, though tangentially related, case law, while attempting to afford Mr. Hamilton an opportunity to purchase the property. Ultimately, Mr. Hamilton could not afford to purchase Ms. Johnson's interest in the property.

While Respondent's trial performance skirted the bounds of competent representation, his representation in the Court of Special Appeals cannot be deemed to have been competent. In the unreported decision in Hamilton v. Johnson, Court of Special Appeals, No. 468, September Term, 2005, Judge Davis wrote: "Preliminarily, we will discuss three of

appellant's eight arguments based on his failure to present cogent and comprehensive arguments to support his position...It is clear from the 'arguments' set forth above by appellant that he presents nothing more than legal references and conclusions to support his position. His arguments above are not presented in the context of facts of this case, nor does he make an effort to apply the law, or invoke precedent to bolster his argument...We decline to address issues three, four, and five of appellant's brief for failure to provide support." In declining to consider Respondent's contention that Mr. Hamilton was entitled to purchase the property for fifty percent (50%) of the appraised value, Judge Davis wrote, "In light of our finding that appellant's reliance on Dorsey and Kelly is misplaced and the cases in applicable, see III. B. supra, and appellant's failure once again to present a lucid and substantial argument, we decline to address this issue on the merits."

Considering Respondent's performance as a whole, this Court finds that Respondent violated MRPC 1.1.

Maryland Rules of Professional Conduct 1.7(b) – Conflict

Rule 1.7(b) provides in pertinent part that except as otherwise provided, a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if there is a significant risk that the representation of one or more clients will be

materially limited by a personal interest of the lawyer. Notwithstanding the existence of a concurrent conflict of interest under the Rule, a lawyer may represent a client if:

> *(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;*
> *(2) the representation is not prohibited by law;*
> *(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and*
> *(4) each affected client gives informed consent, confirmed in writing.*

Petitioner contended that Respondent's dual role as Mr. Hamilton's real estate broker and attorney for the disputed sale of the property constituted a conflict of interest. Respondent countered that Mr. Hamilton entered into the agreement with Geoplex Realty as a convenience, insofar as any broker's fees earned from the sale of the property were to be applied to Mr. Hamilton's attorney's fees.

Respondent reasonably believed that he could provide competent and diligent representation while also serving as his client's real estate broker. There was no evidence that Respondent's performance was colored by the fact that his fees, which would presumably be owed regardless of whether Respondent served as the real estate broker, would be

paid in part from the proceeds from the property. Petitioner did not contend that Respondent violated any law by employing his firm as the intended broker for the sale of the property. There was no showing that Respondent's role as broker posed a significant risk of materially limiting his ability to consider, recommend or carry out an appropriate course of action f or his client, nor that it prohibited his ability to give detached legal advice.

Petitioner did not establish by clear and convincing evidence that Respondent violated MRP C 1.7(b).

Maryland Rules of Professional Conduct 3.1 – Meritorious Claim

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein , unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.

Respondent was sanctioned at both the October 22, 2004 and March 17, 2005 hearings for violating Maryland Rule 1-341. The Court of Special Appeals sustained the sanctions. While not dispositive, sanctions imposed by other tribunals may be considered in deciding whether MRPC 3.1 has been violated.

Respondent was advised at the October 22, 2004 hearing that this arguments had no merit. Despite this , he continued to file motions relying on

the same facts, same argument and same legal theory. Respondent had no basis for filing the Motion to Set Aside and/or Vacate Default Judgment, the Motion to Compel Sale of the Property, Motion to Alter or Amend Judgment, Request for Sanctions Pursuant to Maryland Rule 1-341, or the Emergency Motion to Allow Respondent Priority to Settle with Trustee or to Stay Transfer Title to Third Party Purchaser. Accordingly, it was established by clear and convincing evidence that Respondent violated MRPC 3.1.

Maryland Rules of Professional Conduct 3.2 – Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Respondent employed dilatory tactics, including unwarranted motions and false representations that settlement had occurred, to prevent the sale of the property, thereby frustrating the opposing party's attempt to obtain rightful redress. Petitioner established by clear and convincing evidence that Respondent violated MRPC 3.2.

Maryland Rules of Professional Conduct 3.3(a) – Candor Towards the Tribunal

A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter that the lawyer reasonably believes is false.

A lawyer must avoid conduct that undermines the integrity of the adjudicative process and must not allow the tribunal to be misled by false statements of law or fact that he knows to be false.

Respondent knowingly made false statements when representing that settlement had occurred. As well, Respondent relied on misleading statements of fact regarding Judge Dawson when appealing the sanctions imposed by the trial judge. Respondent knew or should have known that these representations were false.

Petitioner established by clear and convincing evidence that Respondent violated MRP C 3.3(a).

Maryland Rules of Professional Conduct 4.4(a) – Respect for Rights of Third Persons

In representing a client, a lawyer shall not use

means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

A lawyer's responsibility to his client does not imply that he may disregard the rights of third persons. While there was no suggestion that Respondent's tactics were intended to injure Ms. Johnson nor that he or his client bore any ill-will towards Ms. Johnson, his actions were pursued in total disregard for their substantial cost to Ms. Johnson , were intentionally dilatory and were without legal basis. While Respondent's goal was to enable his client to purchase the jointly held property, his tactics clearly and convincingly constituted a violation of MRPC 4.4(a).

Maryland Rules of Professional Conduct 8.2(a) – Judicial and Legal Officials

A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

Petitioner pointed to Respondent's March 25, 2005 letter to Judge Missouri and Appellant's Brief in support of its contention that Respondent violated MRP C 8.2(a).

The letter to Judge Missouri, while an inappro-

priate appeal, did not impugn Judge Dawson's qualifications or integrity.

On the other hand, Respondent's brief included statements regarding Judge Dawson's integrity which were known to be false or were made with reckless disregard for the truth. As the Court of Special Appeals opined after evaluating Respondent's contention that Judge Dawson had "admitted in open court that he 'was too close to the case'," Respondent "adroitly misconstrue[d] and twist[ed] the words of the court to create an argument or statement that was not initially iterated." Respondent's brief further asserted that Judge Dawson had admitted in open court that he disliked Respondent and then improperly refused to recuse himself. Judge Dawson made no such comments.

While Respondent may have had a good faith belief that Judge Dawson did not like him, the use of misleading statements to support the assertion that Judge Dawson was motivated by personal bias improperly called the judge's integrity into question. Accordingly, it was established by clear and convincing evidence that Respondent violated MRPC 8.2(a).

Maryland Rules of Professional Conduct 8.4(c) – Misconduct

It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

Respondent advised the Court that his client had settled on the disputed property when he had not. He further misrepresented Judge Dawson's words in the appellate brief. Accordingly, it has been established by clear and convincing evidence that Respondent violated MRPC 8.4(c).

Maryland Rules of Professional conduct 8.4(d) – Misconduct

It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

Conduct that reflects negatively on the legal profession and sets a bad example for the public at large is prejudicial to the administration of justice. Behavior that may seriously impair public confidence in the entire profession, without extenuating circumstances, may be conduct prejudicial to the administration of justice.

Respondent's frivolous motions, intentionally dilatory tactics, and misrepresentations were prejudicial to the administration of justice. While Respondent no doubt was motivated by commitment to his client, rather than 13 Md. Rule 16-759(b) provides: enmity for Ms. Johnson or antipathy for the legal system, the result was prejudicial to the administration of justice in violation of MRP C 8.4(d).

Mitigation

Respondent did not act with dishonest or selfish motive's, nor with intent to hurt Ms. Johnson. He apparently thought he could achieve his client's ends, acquisition of the jointly titled property in which his client resided, without depriving Ms. Johnson of fair compensation. Respondent's legal arguments, while not supported by the case law, cited or otherwise, were proffered with the intent of convincing the court that a party with an existing interest in property should be afforded the right to purchase the property as long as the party offers a purchase price consistent with the appraised value, even if a higher offer has otherwise been submitted. Unfortunately, Responded pursued this theory inappropriately, with the consequences cited above.

(Emphasis in original).

Neither Respondent nor Bar Counsel filed exceptions to the hearing court's findings of fact or conclusions of law.

STANDARD OF REVIEW

In attorney discipline proceedings, this Court has original and complete jurisdiction and conducts an independent review of the record. Attorney Grievance Comm'n v. Zuckerman, 403 Md. 695, 709, 944 A.2d 525, 534 (2008); Attorney Grievance Comm'n v. Nussbaum, 401 Md. 612, 632, 934 A.2d 1, 12 (2007); Attorney Grievance Comm'n v. Lawson, 401 Md. 536, 571-72, 933 A .2d 842 , 863 (2007). We review the hearing judge's conclusions of law de novo.

Md. Rule 16-759(b);[13] Attorney Grievance Comm'n v. Kreamer,Bar Counsel points to Respondent's false and misleading statements to the Circuit Court and the Court of Special Appeals, and our decision in Attorney Grievance Comm'n v. Siskind, 401 Md. 41, 75, 930 A.2d 328, 348 (2007), where we noted that the ultimate sanction of disbarment was appropriate for violations involving dishonesty, fraud, or deceit. In addition to the violations currently before this Court, Bar Counsel points to Respondent's prior sanctions imposed by this Court. On February 24, 2003, Respondent was suspended from the practice of law for thirty days for his failure to properly hold client fund s in trust, and failing to appropriately designate his attorney trust account. On October 30, 2005, Respondent was suspended for ninety days, by consent, for violations of MRPC 3.1 (Meritorious Claims and Contentions), 3.2 (Expediting Litigation), 3.3 (Candor Toward the Tribunal), and 8.4(d) (Conduct Prejudicial to the Administration of Justice).We have said that the purpose of attorney discipline proceedings is to maintain the integrity of the legal profession, protect the public, and deter further violations of the MRPC by other attorneys. Attorney Grievance Comm'n v. Zuckerman, 386 Md. 341, 375, 872 A.2d 693, 713 (2005). We determine the appropriate sanction for violations of the MRPC based on the individual facts and circumstances of each case. Id. With regard to the sanction for violations involving dishonesty, this Court has said:

> [u]nlike matters relating to competency, diligence and the like, intentional dishonest

> conduct is closely entwined with the most important matters of basic character to such a degree as to make intentional dishonest conduct by a lawyer almost beyond excuse. Honesty and dishonesty are, or are not, present in any attorney's Disbarment ordinarily should be the sanction for intentional dishonest conduct.

404 Md. 282, 292, 946 A.2d 50 0, 506 (2008); Attorney Grievance Comm'n v. Parsons, 404

DISCUSSION

Upon reviewing the record, we determine that the hearing judge's conclusions of law are supported by clear and convincing evidence. We therefore turn to the task of determining the appropriate sanction for Respondent's violations of the MRPC. Bar Counsel recommends that Respondent be disbarred. Respondent recommends a ninety day suspension as the appropriate sanction, because he was not motivated by personal gain, but rather an overzealous desire to protect his client's interests.

Siskind, 401 Md. at 75, 930 A.2d at 348. Furthermore, "[o]nly in the case of compelling extenuating circumstances 'will we even consider imposing less than the most severe sanction of disbarment' in cases involving dishonesty and fraudulent conduct." Attorney Grievance Comm'n v. Goodman, 381 Md. 480, 499, 850 A.2d 1157, 1168 (2004) (quoting Attorney Grievance Comm'n v. Vanderlinde, 364 Md. 376, 414,

773 A.2d 463, 485 (2001)). In Vanderlinde, we went on to say that, in such cases, we will not accept, as "compelling extenuating circumstances," anything less than the most serious and utterly debilitating mental or physical health conditions, arising from any source that is the "root cause" of the misconduct and that also result in an attorney's utter inability to conform h is or her conduct in accordance with the law and with the MRPC. 364 Md. at 413 -14, 773 A.2d at 485. Vanderlinde is a seminal case, in that it sought to return some measure of consistency to the analysis of sanctions in intentional dishonesty cases. After documenting the tortured and sometimes inexplicable "all-over-the-ballpark" array of sanctions in cases of attorney dishonesty that preceded it, Vanderlinde endeavored to restore a principal, guiding star for the sanctions in such cases.

Attorney Grievance Comm'n v. Pennington, 387 Md. 565, 597, 876 A.2d 642, 661 (2005); see also In re Pennington, 921 A.2d 135, 140 (D.C. 2007) (noting that Pennington's disbarment in Maryland "was dictated by what amounts to a presumption under Maryland law that an attorney who engages in intentional dishonesty will be disbarred"). In Goodman, we imposed the sanction of disbarment because an attorney filed pleadings and signed the name of a different attorney without that attorney's knowledge or permission. 381 Md. at 483, 499, 850 A.2d at 1159, 1168. In addition, Mr. Goodman negotiated a settlement with opposing counsel, while pretending to be this other attorney, and also attempted to mislead the trial judge about his (Mr. Goodman's) identity. Goodman, 381 Md. at 483, 850

A.2d at 1159. We reasoned that disbarment was the appropriate sanction, in part, because "a lawyer's act of dishonesty, fraud, or deceit might cause the public to lose confidence in other lawyers and the judicial system as a whole." Goodman, 381 Md. at 498, 850 A.2d at 1168 (quoting Attorney Grievance Comm'n v. White, 354 Md. 346, 364, 731 A.2d 447, 457 (1999)). While, in this case, the hearing judge found that Respondent was motivated by a desire to further his client's interests, and not a desire to harm Ms. Johnson, we cannot say that his intent, without more, is compelling enough for us to impose less of a sanction than disbarment in this case. Respondent was intentionally dishonest with both the Circuit Court and the Court of Special Appeals, and, as we have noted previously, "intentional dishonest conduct is closely entwined with the most important matters of basic character to such a degree as to make intentional dishonest conduct by a lawyer almost beyond excuse." Vanderlinde, 364 Md. at 418, 773 A.2d at 488. Furthermore, Respondent went so far as to create a "sham" settlement, at a time he knew the Trustee was out of the country, and indicated to the court that his client had settled. This shows a systematic effort by the Respondent to mislead the court. Given Respondent's history of sanctions before this Court for violating the MR PC, it appears that Respondent has shown an ongoing disregard for the MRPC.

In light of these facts, therefore, we impose the sanction of disbarment.

IT IS SO ORDERED. RESPONDENT SHALL PAY ALL COSTS AS TAXED BY THIS COURT, INCLUDING THE COST OF TRANSCRIPTS, PURSUANT TO MARYLAND RULE 1 6 - 7 6 1 FOR WHICH SUM JUDGMENT IS ENTERED IN FAVOR OF THE ATTORNEY GRIEVANCE COMMISSION AGAINST CHARLES E. MCCLAIN, SR.

Chief Judge Bell and Judge Eldridge would impose an indefinite suspension rather than disbarment as the appropriate sanction.

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

BARBARA JOHNSON,
Plaintiff

vs.

Civil Action Equity
Number 03-14856

GUSTAV HAMILTON,
Defendant

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

(Motions Hearing)

Upper Marlboro, Maryland
Thursday, March 17, 2005

BEFORE:
HONORABLE HERMAN C. DAWSON,
Associate Judge

APPEARANCES:
For the Plaintiff:
TODD KELTING, ESQ.

For the Respondent:
CHARLES E. McCLAIN, SR., ESQ.

Court-Appointed Trustee:
ADEKUNLE A. AWOJOBI, ESQ.

ELIZABETH S. BINGHAM, RMR
Official Court Reporter, P.O. Box 401
Upper Marlboro, Maryland 20773

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PROCEEDINGS

THE COURT: Civil Action Equity Number 03-14856, Johnson versus Hamilton. Parties and counsel in the matter, please come froward.

Mr. McClAIN: Charles McClain, Senior, on behalf of Mr. Hamilton, Your Honor.

Mr. KELTING: For the record, Todd Kelting on behalf of Ms. Johnson, Your Honor.

Mr. AWOJOBI: Ade Awojobi, A-d-e, A-w-o-j-o-b-i. I'm the trustee.

THE COURT: Okay. What is the status of this matter?

Mr. McClAIN: Your Honor, the status may I speak first, Your Honor?

THE COURT: Somebody.

Mr. McCLAIN: Your Honor, the status of this matter is that there is presently negotiation going on between the trustee and Mr. Gustav, the purchaser.

THE COURT: Mr. Gustav, that would be Mr. Hamilton?

Mr. McClAIN: Mr. Hamilton, yes.

And the item of contention, Your Honor, is the price of the property. A few days ago, I submitted the Court an appraisal on the property of $228,000, which conforms to the court rule that the trustee file in the proceedings and appraisal before the property is offered for private sale.

THE COURT: Has the property been sold?

Mr. McCLAIN: Yes, Your Honor. There is a contract to sell slash refinance the property.

Mr. KELTING: The answer to your question, Your Honor, is that the property has not been sold, despite the fact you ordered it sold in October 2004.

THE COURT: Okay

Mr. KELTING: That is the brief answer.

Mr. AWOJOBI: Your Honor, I filed a Report of Sale with you. The property, right now, is contracted to be sold. And I'm ready to go to settlement on it within the next two weeks, subject to your ratification, Your Honor. So as far as I'm concerned, the property is sold but not to Mr. Hamilton.

THE COURT: Are you in negotiation with him?

Mr. AWOJOBI: Your Honor, I've been in negotiation with them since last August. And I've given him over and over and over I've lost two contracts because of him for all these negotiations. I have a contract that has been there since December of last year. The still want to buy. They have done the appraisal. They are ready to buy. It is a reputable company, Keller Williams. In fact, they re ready to go to settlement if Mr. Hamilton is not ready.

And I've given everything every chance to Mr. Hamilton to get to settlement. His loan officer, lender, wrote me a letter and said it would go to settlement on February 25th. On February 25th, they said I should remove property from MLS because it is disturbing them. This is something they knew since last year.

So I grew tired of it. And I got in contract back with the people who were just waiting on th e side. They are ready to go to settlement. Your Honor, if you ratify this sale, we will sell this property in two weeks.

Mr. Hamilton is trying to force the sale of the property to him at a lesser amount, to 228,000. That is out of the question, to have a property in contract for 250,000. If the Court wants me to sell for 228, I

will. But I have a contract for 250,000. And as trustee, I cannot take a lesser amount, when I have a contract for higher amount that is ready to go to settlement.

THE COURT: Okay.

Mr. KELTING: If I may, Your Honor.

THE COURT: Do you want Mr. Hamilton to get the property?

Mr. KELTING: Do I? I Don't care.

THE COURT: You don't care, as long as the trustee gets the best value for it?

Mr. KELTING: I want her to stop having to pay a mortgage payment every month. And I want the property sold. That is all for 20 months, that s all we want.

THE COURT: To whomever with the best amount?

Mr. KELTING: That's correct. But, YOUR HONOR, this case is a lot more complicate now than Mr. McClain would let on. As you may recall, the last time we were here on this case, you sanctioned Mr. McClain in the amount of $2200, and Mr. Hamilton, his client. Ten days after that he filed another Motion To Alter or Amend Judgment. That motion is still pending.

Your Honor, that motion if I can summarize it is based on their contention that we should be forced to satisfy our claim and be forced to allow Mr. Hamilton to purchase the property. The motion has no basis whatsoever. It was, at the time, the latest in a series of baseless motions.

We filed, in response to that a motion to have the respondent and his counsel held, or sanctioned, for violations of Rule 1-341, which has been their ongoing mode of operation in this case. They file

whatever they want whenever they want, whether it is based on the law or facts. And their goal throughout this process has been to delay and to prevent the property from being sold to the third party. The motion for sanctions has not yet been ruled on.

Less than a week later, Mr. McClain filed a motion to have us sanctioned for failing to settle the case with him. That motion for sanctions has not been ruled on, either, Your Honor. And I would love for it to be ruled on promptly.

We filed a motion in November for expedited relief. We're now in March. So I guess that motion is moot. But in November, we were notified by the trustee that Mr. Hamilton had submitted a contract to purchase the house in the amount of $250,000. The contract, which is part of this Court's record, called for settlement on or before November 25th, 2004.

When November 25th came and went, and the respondent had not yet come to settlement, on December 7th, the trustee informed everybody that I apologize, Your Honor. Prior to December 7th, the Trustee notified both parties that Mr. Hamilton had until December 7th to come to settlement. He failed to so on that date.

On December 15th, after almost three weeks had passed since the original settlement date of November 25th, the Trustee notified both parties that Mr. Hamilton's contract had been cancelled for nonperformance. He had another contract in place at that time. It is the same contract we are dealing with now, from a third party, to sell the house for $250,000. That contract was prevented from going forward at that time because Mr. Hamilton refused to

allow access to the appraiser to the house.

In late December, I had to file a motion to have the respondent and his counsel held in contempt for failing to comply with this Court s order to have the property sold. By preventing the appraiser from going in, it effectively prevented the settlement from taking place in December. The motion to have the Respondent and his counsel held in contempt is still pending, Your Honor.

In January, Mr. McClain scheduled a settlement without having his contract approved by the trustee, without telling anybody when it was going to be, and while the trustee was out of the country. He appears to rely on that settlement, which never took place. There is no cash sitting in an account somewhere.

In February, there was another settlement scheduled, after threats of specific performance suits against the Trustee and threats of basically delaying this process indefinitely.

THE COURT: What is the status? Is there an appeal pending in this matter?

Mr. KELTING: The appeal has been dismissed.

Mr. McCLAIN: That has been voluntarily dismissed.

THE COURT: I just asked whether there was an appeal pending. I just want to know whether it is pending.

Mr. KELTING: The appeal is no longer pending. As a result of the threats, and in order to move this process forward, the Trustee, again, entered into negotiations with Mr. Hamilton and Mr. McClain. There was a settlement scheduled for, I believe, February 25. When February 25 came along,

and I hadn't been notified of a time or place of the settlement and hadn't been given a HUD-1 to find out what was going on with the financing. I was told that instead of trying to purchase the house for 250 which is the contract price now Mr. Hamilton is intending to go forward to purchase the house for $228,000, because he doesn't think he should have to pay anything more than the appraisal price.

Now I'm told by the Trustee that there's a third-party contract that is in place to buy the house for 250. That is a $5,000 credit that is apparently going to be applied, because Mr. Hamilton has allowed mold to develop in the basement of the house.

That is a house that my client hasn't lived in since June of 2003, Your Honor. This case has been pending for more than 20 months. Since this Court ordered the property sold and appointed the Trustee since June of last year, my client has had to make nine mortgage payments in a real estate environment where sale of the property should have been immediate and prompt. This is a house that has more that $1000,000 in equity based on the sales contract that is in place now.

The motions in this case that have been filed by the respondent are completely irresponsibly filed. They violate the rules in this case, Your Honor. My client has also incurred attorney's fees in this case since June of last year. For a case where there is no defense, she has been forced to incur attorney s fees.

THE COURT: What is the amount?

Mr. KELTING: $14,000, Your Honor.

Your Honor, these are the pleading binders that I have for this case. This is a partition case where there is no defense. The series of motions that

have been filed by the Respondent and his counsel in this case all violate the Maryland rules. There is no basis for a single motion that has been filed by Mr. Hamilton or Mr. McClain in this case. And for those reasons, we ask that sanctions be imposed and that the sanctions be awarded for Mr. Hamilton s share of the proceeds of the sale of the property.

THE COURT: In what amount?

Mr. KELTING: You've already sanctioned him in the amount of 2200. I would ask for ten.

THE COURT: You ask for what?

Mr. KELTING: $10,000, Your Honor.

THE COURT: In addition to the 2200?

Mr. KELTING: In addition to the 2200.

THE COURT: Is that in addition to the attorney's fees?

Mr. KELTING: That is the attorney's fees.

THE COURT: What is the attorney's fees?

Mr. KELTING: The attorney's fees she has incurred since June of $14,000.

THE COURT: Right. I understand.

Mr. KELTING: You already sanctioned him for 2200 of that.

THE COURT: 2200 are the legal fees?

Mr. KELTING: 2200 were the legal fees that I anticipated when we were before you in October.

THE COURT: I'm trying to see how you got the ten as opposed to the 27 or whatever. I'm trying to figure

Mr. KELTING: I'm just giving him a break.

THE COURT: Okay.

Mr. KELTING: I'm sure there is money spent there dealing with the Trustee that would have been a normal part of this process.

THE COURT: I'm trying to get

Mr. KELTING: That's my rationale, Your Honor.

THE COURT: Okay. Mr. McClain.

Mr. McCLAIN: Your Honor, we shouldn't be here this morning. Your Honor, we wouldn't be here this morning, if the Trustee had acted according to your order. Your order was that the property be sold according to the real estate title.

The real estate title addressing that states that before the property is offered for private sale, the Trustee must be placed a bond into the Court. The Trustee must place an appraisal in these proceedings.

He has done neither, Your Honor. He comes here this morning with a report of Sale, which outlines that he is going to post a bond today. That was supposed to have been done prior to the property being offered for sale, Your Honor.

He comes up with an appraisal of $200,000, that is dated June of 2004. Your Honor, if that appraisal had been put into the report, Mr. Hamilton was prepared to go to settlement for $200,000. In order to aid the court in its responsibility

THE COURT: Let me stop you a minute. What was the basis for filing your This Docket Entry Number 38, Motion To Alter or Amend?

Mr. McCLAIN: The basis for filing the Motion to Alter or Amend, Your Honor, was, to state that, according to an old case, Kelly versus Gilbert, that even though the Court enters an interlocutory order for the property to be sold, the rights and the priorities of the property of the parties should be addressed.

The rights

THE COURT: Say that again?

Mr. McCLAIN: The rights I'll read to you, Your Honor, from the case.

An order for decrease of sale of property was as we have Sid an have interlocutory order and paced merely for the protection of the property.

THE COURT: Okay.

Mr. McCLAIN: And for the interests of all persons involved. And such being the case, until there was a final decree determining the rights of the parties and distributing the proceeds of sale, th bill to open by amendment, by leave of court. I'm asking Your Honor to amend your order.

THE COURT: For what purpose? Wasn't that the case at the time I made the ruling back in October?

Mr. McCLAIN: According to the rights of the parties,Your Honor, and the priorities. I'm addressing the priorities, Your Honor.

THE COURT: What changed? What changed between October 22 and November 1st?

Mr. McCLAIN: There was never an establishment or a priority for the joint tenant, who has the same rights as the other joints tenant, who is in the possession of the property to refinance the property.

THE COURT: What does that have to do with anything? I can't order the Petitioner to allow him to refinance.

Mr. McCLAIN: But you can well, there has been an agreement in a memo from the opposing attorney that he can refinance.

THE COURT: Yes. But I can't order her.

Mr. McCLAIN: No. But

THE COURT: Mr. McClain

Mr. McCLAIN: You can't order her to refinance the property. But you can certainly give priority for him to be the first to buy

THE COURT: Mr. McClain

Mr. McCLAIN: to buy the property.

THE COURT: Mr. McClain, between October 22 and November the 1st, when you filed your motion, what had changed from my ruling to then?

Mr. McCLAIN: As stated in my argument, Your Honor. What had changed, Your Honor

THE COURT: Mr. McClain, look what is stated in your motion.

Mr. McCLAIN: that his rights are more fully represented in the attached memorandum of law.

THE COURT: So tell me what I did wrong.

Mr. McCLAIN: I didn't say that you did anything wrong, Your Honor. What

THE COURT: So why should I alter or amend my decision?

Mr. McCLAIN: To consider the priority rights of Mr. Hamilton.

THE COURT: Who said I didn't consider them then?

Mr. McCLAIN: It wasn't spelled out, Your Honor, in your in the transcript that we have of the property of your

THE COURT: Who says I did not consider the case law at that time, Mr. McClain? When I read your motion, I don't see anything that states anything.

It rambles on about the he got loan approval on June 1st. It goes on to say that allowing him to refinance would not prejudice the plaintiff. It goes on

to state the differing amounts as to the value of the property and how much he has been approved for refinancing. You then said, it is anticipated that the refinance could transpire almost immediately, eliminating the necessity of proceedings on appeal.

Apparently, what you're saying is there was an appellate issue, but rather than take it on appeal, you wanted me to rethink what I did.

Mr. McCLAIN: To amend, Your Honor. Not rethink.

THE COURT: To amend to what?

Mr. McCLAIN: To amend to give Mr. Hamilton the right to buy the property and your

THE COURT: I can't do that, can I? If he buys it, he buys it. But I can't order that.

Mr. McCLAIN: You can order that he be given the priority, as the join tenant in this matter

THE COURT: Mr. McClain.

Mr. McCLAIN: to purchase the property.

THE COURT: I think that is what the Petitioner is saying. It sounds like he is saying it directly, that that was a baseless filing. Is that correct?

Mr. KELTING: Absolutely, Your Honor. There is no support for that position, whatsoever, except for two cases that don't apply from the 1800s. That is his only support.

THE COURT: Mr. McCLAIN.

Mr. McCLAIN: There is also

THE COURT: Mr. McCLAIN.

Mr. McCLAIN: The issue of the appraisal, Your Honor. Here

THE COURT: Mr. McCLAIN.

Mr. McCLAIN: yes, Your Honor.

THE COURT: That is later filings. I'm talking about this particular filing.

Mr. McCLAIN: I'm speaking of this particular filing, your Honor.

THE COURT: Okay.

Mr. McCLAIN: And it goes on here to say that he has been approved for finance and states what the existing mortgage is. It also addresses the price of the property. And that is what is at issue even now.

THE COURT: Mr. McCLAIN, I don't know whether you were trying to delay the Trustee from doing what he was supposed to be doing. I don't know whether you're trying to frustrate the Petitioner and the relief that she was requesting. I don't know whether you're trying to keep anybody else from buying the property. I don't know whether you were just filing matters.

Mr. McCLAIN: How can that be, Your Honor, if the record shows that Mr. Hamilton obtained an appraisal, because there was not an appraisal in the file?

THE COURT: Mr. McCLAIN, on November 1st when you filed this document

Mr. McCLAIN: There was not an appraisal in the file.

THE COURT: Mr. McClain.

Mr. McCLAIN: Yes, Your Honor.

THE COURT: You didn't file exceptions, Mr. McClain?

Mr. McCLAIN: Pardon?

THE COURT: Don't you then file the exceptions?

Mr. McCLAIN: Exceptions to the sale?

THE COURT: Yes

Mr. McCLAIN: There is no need to file exceptions to the sale, Your Honor, because of the fact that Mr. Hamilton every action that he did was to satisfy the requirements of the sale. He cannot satisfy the requirements of the sale. We have the

THE COURT: Mr. McClain. Mr. McClain. Yes, Sir.

Mr. AWOJOBI: I filed a motion to compel sale in this courtroom because he had wanted to argue several motions before you. That was the day he was sanctioned. And in that motion, I still said there was an appraisal for 200,000.

There are two issues before Your Honor. Mr. McClain believes that once I have an appraisal, I'm bound by that price. I'm not. It is a guide that I shouldn't for that is what I shouldn't go below it.

Now, if, as a Trustee, I have an offer from someone who is paying more than the appraised value, I m obliged to take because

THE COURT: Absolutely, if somebody wants to be the crazy enough to give you more.

Mr. AWOJOBI: A house is worth what anybody is willing to pay for it. So I had a contract on this property. And I told Mr. Hamilton that I have no problem selling to him. Mr. McClain is talking about the bond.

Where there is a sale to Mr. Hamilton, I Don't have to post a bond that is the rule because I'm selling from one joint tenant to the other. And I waited until the last minute, Your Honor.

I would love for Mr. Hamilton to buy this property. After I cancelled the contract on the 15th of December, I still went ahead to give negotiating with him up until February February 25th. On February

18, there about, I got a call from his lender, who told me it's going to settlement on the 25th. I said, Put it in writing. He put it in writing. And that is what is before Your Honor. That is settled on 25th. Come 25th, he tells me I should remove from MLS, because of the loan. By that time, I had it, because we had been on this thing since June.

THE COURT: Sir, you need to take a seat.

Mr. AWOJOBI: We have been on this since June. By September 25th, I'm tired of it.

THE COURT: was there a settlement on January 25?

Mr. AWOJOBI: There was none. I got a call --

THE COURT: Wait. Wait. Wait.

Mr. AWOJOBI: I got a call. I went to the airport.

THE COURT: Wait Wait. There was a settlement?

Mr. AWOJOBI: There was not.

THE COURT: Why wasn't it?

Mr. AWOJOBI: I didn't know anything about it.

THE COURT: Wait. Wait. Wait. I see that's dated after the end, that says there was a settlement.

Mr. AWOJOBI: January 25th

THE COURT: January 25, 2005.

Mr. AWOJOBI: No, sir.

THE COURT: That was not a settlement?

Mr. KELTING: Of course not. That was a settlement that was a sham settlement scheduled by Mr. McCLAIN so he could get to the table first. The Trustee didn't approve it.

Mr. AWOJOBI: I didn't know about it. I got a call when I was going to the airport. I was going out

of the country. And I was told I'm supposed to be at settlement. Who scheduled it?

THE COURT: I'm asking you because you re the court's Trustee.

Mr. AWOJOBI: Yes, sir.

THE COURT: How can there be a settlement without someone clearing it through you?

Mr. AWOJOBI: That is my question, Your Honor.

THE COURT: Mr. McClain, was there a settlement?

Mr. McCLAIN: There was a settlement by Mr. Hamilton awaiting the other half of the settlement by the Trustee.

THE COURT: When you say a settlement , the property sold and everything is exchanged. Was there a settlement?

Mr. McCLAIN: Yes, Your Honor, by Mr. Hamilton.

THE COURT: Okay.

Mr. McCLAIN: And the Trustee

THE COURT: And the Trustee signed off on it? Mr. McCLAIN: He was contacted. And I was told that he was abroad.

THE COURT: Mr. McClain. Wait. Wait. Wait. Just a minute. You are a lawyer.

Mr. McCLAIN: Yes.

THE COURT: You know that once the Court has intervened or participated in proceedings, and there is a court-appointed Trustee, you must go through the Trustee. You Know that.

Mr. McCLAIN: Yes, Your Honor.

THE COURT: And you did something without getting approval of the Trustee?

Mr. McCLAIN: He was contacted.

THE COURT: I didn't say contacted. The question is, you did something with this property without getting the approval of the Court-appointed Trustee?

Mr. McCLAIN: No, Your Honor.

THE COURT: So you got his approval?

Mr. McCLAIN: Yes and no, Your Honor.

THE COURT: Mr. McClain.

Mr. McCLAIN: Yes, Your Honor.

THE COURT: I was hoping it wouldn't come to this. You should know better that a lot of other folks, because you deal with real estate.

Mr. McCLAIN: Yes, Your Honor.

THE COURT: You should know a lot better than other folks, because you've had the exact same issue in front of me regarding filing motions, after the Court has ruled, that so do not state anything, without basis. You should know better. You were sanctioned for that. And after being sanctioned in this case, you then filed a subsequent motion that has little I shouldn't say little has zero basis for the filing. Zero.

And then to tell the Court that your client went to settlement on the property, when the Court has appointed a Trustee to sell the property? That is just absolutely outrageous.

Mr. McCLAIN: That is the practice, Your Honor, in real estate. As a real estate broker, I have had a settlement recently that occurred at Maryland Title whereby the one party appeared at settlement, subject to the completion of the settlement by the other party. But the settlement isn't complete.

THE COURT: Mr. McClain.

Mr. McCLAIN: Until that time.

THE COURT: Mr. McClain, I am seriously considering whether or not you have participated in this to the extent that you have violated the Court's order and to the extent that you know, as a lawyer, it is wrong.

Mr. McCLAIN: I'm asking

THE COURT: I have a court-appointed Trustee to handle this matter. Not you. Not your client.

Mr. McCLAIN: And the Trustee did not act, Your Honor. We wouldn't be here if he had filed his bond and put the appraisal into the report.

THE COURT: Mr. McClain, we wouldn't be here if you did whatever you were supposed to do.

Mr. McCLAIN: We wouldn't be here if he did what he was supposed to do.

THE COURT: The question is what amount should the Court sanction you for what you and your client have done?

Mr. McCLAIN: That is not within the purview of what your order stated. Your order stated specifically that there was to be a bond filed, and that there was to be an appraisal would be put into the Court, and that wasn't done. And we are here this morning because the Trustee, not having done that, then we're attempting to try to resolve the problem.

THE COURT: Mr. McClain, you're not doing anything different from what you did in the other case that I sanctioned you. You just have your way of doing things. Yo' re standing for what reason?

Mr. KELTING: I would also like to add, Your Honor, that when we where here last October, the sales price the Trustee was entering, at that time, from a third-party purchaser, was $259,000. As a

result of the delays engendered by Mr. McClain and his client, that sales contract fell through.

The next contract that was available, at 257, also fell through, because of these delays.

The current sales price is 250, but because of problems in the house created by Mr. Hamilton there is a $5,000 credit. So the sales price in the last five months, bases solely on delays created by Mr. McClain and his client, has fallen from 259,000 to 245. Just so the Courts knows.

THE COURT: Why are you standing?

Mr. AWOJOBI: Mr. McClain keeps talking about me not filing the bond and appraisal. I've done the Report of Sale, Your Honor. I filed the Report of Sale because I was selling to a third party.

In all the time I was dealing with negotiating with Mr. Hamilton, I didn't have to file a bond, if I'm selling to Mr. Hamilton, who is joint party. That is the rule of the Court. And I was waiting for him to finish I filed a bond, my appraisal, everything, my Report of Sale. And Mr. Hamilton seems to believe that once I was appointed Trustee, I was supposed to file an appraisal before you and a bond immediately before you.

The Court said I should file. But the Court didn't say I must file within a particular time. It is before Your Honor I filed my Report of Sale.

THE COURT: Okay.

Mr. McCLAIN: The rule specifically requires Your Honor and the Court.

THE COURT: Mr. McClain, what amount, if any, should I the question is whether I should sanction you, and if so, what amount?

Mr. McCLAIN: You should not sanction me,

Your Honor, because of the fact that it was filed within the time limit. And if that had been acted on before now, it is in the power of the Court to respond to a motion when it decides to respond.

THE COURT: What are you talking about?

Mr. McCLAIN: I'm talking about the motion that was filed to alter or amend judgment was in the time period allowed after the judgment was entered.

THE COURT: I'm not disputing that. He is not objecting to that. Nobody is objecting to that. The question is, what basis do you have to file it? That is the question.

Mr. KELTING: Of course, Your Honor.

THE COURT: That is the question.

Mr. McCLAIN: The basis that I have given to file that I've already expressed. Your Honor it is

THE COURT: Okay

Mr. McCLAIN: requesting an amendment not only to alter, to vacate, or to alter or to amend. And that is asking for an amendment to establish the priority of Mr. Hamilton to purchase the property.

THE COURT: what was the amendment you wanted to ask me to alter or are you asking me to amend? You are asking for an amendment. That s your word. What amendment were you trying to get to?

Mr. McCLAIN: I'm asking for an amendment based upon Kelly versus Gilbert.

THE COURT: Mr. McClain, I've heard that. You are the one used the word. You were asking the Court for an amendment.

Mr. McCLAIN: Yes, Your Honor.

THE COURT: what amendment?

Mr. McCLAIN: I'm asking for an amendment to

state that Mr. Hamilton has the priority of others to purchase the property for an appraisal amount that should have been entered into this matter before he offered the property for sale.

THE COURT: So if he had an appraisal for 228,000 and somebody came and wanted to offer 250,000, he should not take the offer? Is that what you re saying?

Mr. McCLAIN: Not at all. I'm simply saying -

THE COURT: I don't know what you're saying. I'll be honest with you.

Mr. McCLAIN: It is very simple.

THE COURT: Tell me.

Mr. McCLAIN: It is very simple.

THE COURT: Give me a dollar amount. Give me a dollar amount.

Mr. McCLAIN: $228,000 Your Honor.

THE COURT: That is what it should have been sold by the Trustee to your client?

Yes or no? Don't argue.

Mr. McCLAIN: Yes, Your Honor

THE COURT: Isn't that what I just said, Mr. McClain, and you said no?

Mr. McCLAIN: I respect that.

THE COURT: You just told me no. I just asked you that question.

Mr. McCLAIN: And I said 228,000. You asked for a number, Your Honor.

THE COURT: No, Mr. McClain. I gave you those numbers based upon what I heard, and you told me, no, that is not what you were saying.

Mr. McCLAIN: Well, perhaps I didn't give Your Honor the respect of him completing his question.

THE COURT: I completed the question.

Mr. McCLAIN: And I hadn't processed it, Your Honor. I apologize for that.

THE COURT: If that is the case, tell me what the Trustee did wrong in trying to get more money?

Mr. McCLAIN: It is not what he did wrong. It is what he didn't fo, Your Honor.

THE COURT: He didn't sell it to your client for the lower amount?

Mr. McCLAIN: He did not post a bond, and he did not enter an appraisal into the proceedings. That is the rule. That is in your order.

THE COURT: Okay. So you said you want your client to have the priority. That is the amendment that you were saying?

Mr. McCLAIN: Yes, your Honor.

THE COURT: That is what we are dealing with, the amendment?

Mr. McCLAIN: Yes, Your Honor. Yes, Your Honor.

THE COURT: The amendment to allow your client to purchase the property for a lesser amount?

Mr. McCLAIN: Than what, Your Honor?

THE COURT: Than what someone who is ready and able to so, to pay for it?

Mr. KELTING: Your Honor, if I may.

Mr. McCLAIN: Yes, Your Honor.

THE COURT: Okay.

Mr. McCLAIN: Yes.

THE COURT: won't he be violating the rule by taking something less than what he can get for it?

Mr. McCLAIN: No, Your Honor, because

THE COURT: Why should the plaintiff agree to that?

Mr. McCLAIN: Because he is bound by the rules, Your Honor. It is a matter of procedure.

THE COURT: Mr. McClain. Mr. McClain. Mr. McClain. Somebody is either ready and able, for whatever reason, to give $30,000 more for this property.

Mr. McCLAIN: yes, Your Honor.

THE COURT: So if your client had gotten an appraisal for $100,000, should he be allowed to purchase it for $100,000?

Mr. McCLAIN: He should be allowed to appraise it for what the rule requires.

THE COURT: Should your client be allowed to purchase the property for $100,000 if someone is ready, willing and able to pay 250,000 for it?

Mr. McCLAIN: If it is appraised and entered into the proceedings of the Court, according to rule, yes, Your Honor. The reason that the Court has this rule is because of what is occurring now.

THE COURT: Well, what is occurring now is you are making travesty out of the rules.You're making a travesty out of these proceedings.

Mr. McCLAIN: I only quote them, Your Honor. I m not making a travesty if I m quoting it.

THE COURT: Mr. McClain, you made a travesty out of these proceedings. And it is absolutely I don't know whether you are following the dictates of your client. I don't know whether you are coming up with this yourself. I believe that is the reason why the plaintiff is saying the defendant and you individually should be sanctioned. Is that what you're saying?

Mr. KELTING: Yes, it is, Your Honor.

THE COURT: That is why he is here. You may

represent your client. But the client can ask you to fo something and there is no basis in doing it. You are not obligated to do it. As a matter of fact, it is Rule 1-341

Mr. KELTING: That's correct, Your Honor.

THE COURT: Rule 1-341 says you may be sanctioned individually if you know that you are either pursuing a claim or defending a claim without just cause.

Your client may do it for whatever reason, because he nay be vindictive against the plaintiff. And he may say, by golly, I'm going to get this property whatever I can do. If he wants to take that position, and it is against the law, and it is against your advice, you say, Mr. Hamilton, I'm sorry, I've given you my representation. I've given you my advice. I am no longer representing you in these procedures. I know what Judge Dawson would do if we go in there and attempt to file these proceedings or file subsequent proceedings when we don't have a base to be filing it. You want to go get somebody else to represent you. I'm not going to do it.

So my question is whether your client is telling you to do this. If your client is not telling you, and you re doing it on your own, then it is not the client. It is solely you. And if you re doing it on your own without a basis, the 10,000 is not against you and your client, it is against you individually.

Mr. McCLAIN: For the record, Your Honor

THE COURT: What the client is telling you it is both of you, you get the money from the sale of the property be yes, sis did

Mr. HAMILTON: Can I say something?

THE COURT: Yes or no? Are you asking your

attorney to file these pleadings with the court? Yes or no?

Mr. HAMILTON: Your Honor, a lot of things have been said here.

THE COURT: Yes or no? Whether you advised your attorney to file this motion to alter or amend the judgment that I did in October? That is the question.

Mr. HAMILTON: My attorney basically advised me of a lot of the procedures of what should be filed according to certain laws. The attorney advised me of those different laws, that and procedures that the Court should recognize.

This is what I was informed by the attorney. I would like to address some of the issues that were stated here today, because, if it is permissible

Mr. KELTING: Is Mr. Hamilton under oath, Your Honor or is he just going to talk? I have a couple of things I would like to point out, if I may, before he has his soliloguy.

THE COURT: What is that?

Mr. KELTING: The first thing is if Mr. What I can is what he is seeking in his motion to alter or amend before the Court today, I would won why on December 1st he filed his emergency motion to allow client I would ask why he field petitioners motion I'm sorry emergency motion to allow Respondent priority to settle with Trustee or to stay transfer titles to the third-party purchaser. It seems like the basis for his motion to alter or amend is either duplicated baselessly in both cases, but if that is the motion, I'm not sure why we need to file it twice, if it necessitated a response.

Furthermore, Your Honor, I would point out that just as aside the contract that was submitted by

Mr. Hamilton in this case provided for commission for Mr. McClain as his real estate agent in this case.
THE COURT: Excuse me?

Mr. AWOJOBI: Yes. The contract is before you. Mr. Hamilton submitted a contract in this case for 250,000. I don't know what this whole thing is about. He agreed to pay $250,000. At some point, so what are we talking about? Why does he want 228 now? You put a contract for 250,000 before Your Honor

THE COURT: Wait. Wait. Wait.

Mr. KELTING: And the contract itself, because Mr. McClain represented him as his real estate agent in a contract to refence the property, Mr. McClain is seeking commissions of three percent as his real estate agent.

Mr. McCLAIN: And no legal fees from that point

THE COURT: I don't know. I don't know. But is that legal? I mean is it ethical?

Mr. McCLAIN: I'm licensed realtor, Your Honor.

THE COURT: Is it ethical?

Mr. McCLAIN: It is ethical if you don't receive two amounts for it. I cannot charge him legal fees. And I cannot charge him commission. So there is no duplication.

THE COURT: I don t know, Mr. McClain, this is one

Mr. McCLAIN: And that would come out of the proceeds anyway, regardless of how it was sold. The commission would be paid and the commission would be split in this case, Your Honor.

THE COURT: Excuse me. Madam Clerk, swear Mr. Hamilton.

THE DEPUTY CLERK: Please raise your right hand.

GUSTAV HAMILTON,

a witness produced on call of the Court, having first been duly sworn, was examined and testified as follows:

EXAMINATION BY THE COURT:

Q. Okay. Sir, is there a retainer agreement between yourself and Mr. McClain?

A. Retainer agreement?

Q. Where you paid Mr. McClain and amount?

A. Not for this, Your Honor. No.

Q. Not for what?

A. For the property.

Q. What do you mean?

A. Right now, we went to court. We went to Court once, I retained Mr. McClain earlier.

Q. What do you mean you went to court once?

A. We came here for this is the second time.

Q. You paid him for the first time?

A. Yes, Your Honor.

Q. What fo you mean you paid him for the first time?

A. When we first when I was first giving notice of notification that the property was to be sold, I went to Mr. McClain to help me resolve the issues.

Q. And you hired him for a fee

A. At that time, yeas Your Honor.

Q. to represent you to keep from having the property sold?

A. Yes, Your Honor.

Q. And you paid him a fee?

A. Yes, Your Honor. This is my second time in front of you.

Q. That has nothing to do with this is the second time or the 20th time.

It is quite unfortunate because, from October 22, 2004, there were docket entries. We have had somewhere around 26 docket entries since then. A lot of them are just filings with the Court asking the Court to do certain things. The question the Court has is, your attorney has tried to explain that he was getting a fee.

A. Those fees has been exonerated.

Sir, I don't know.

Q. Sir, I don't know.

A. I saying that the fee has been exonerated. The amount that was given Mr. McClain I'm quite sure has been exonerated.

Q. I don't know. I don't know. I have no idea. But if you paid him to represent you in this case, he cannot also get a fee from the selling of the property.

A. Well, as I said, Your Honor, you say you don t know. What would it take for you to know if there has been?

Q. That is the question, whether someone else needs to take a look at this to determine. Because if you've hired him to retain and represent you regarding your interest in this case, you paid him. There is a fee that has been paid. And then you say, well, I also get a fee from the sale of the property.

A. Well, like I said, Your Honor, the fee has been exonerated. What would you need to know to show that, the fee has been exonerated?

Q. So rather than, now I'm really lost. Legal representation is going on. And what you re telling

the court is that you've paid him to represent you in a legal proceedings, but now, Mr. McClain is going to get a fee from the sale of the house in addition to what you paid him to represent you in the legal for the legal representation.

A. But not in addition, Your Honor.

Q. Yes, it is.

A. If I say again, it s been exonerated so

Q. Sir. Sir. You paid him. That is legal representation. You stand for what reason?

Mr. KELTING: Yes, Your Honor. I just want to clarify. It is not a sale of the house. It is a refinance. There is a contract. But it is a refinance. There is no, he is seeking $7500 for his client to refinance.

THE COURT: I got that from the 350.

Mr. KELTING: From three percent of the 250 for him to refinance the property.

Mr. McCLAIN: That is in cooperation with the other broker that listed the property, Your Honor.

THE COURT: Mr. McCLAIN

Mr. McCLAIN: Yes, Your Honor.

THE COURT: Who is the other broker listing the property?

Mr. McCLAIN: Yes there is, Your Honor.

THE COURT: He is the person (referring to Trustee.)

Mr. McCLAIN: it is listed for sale in the Metropolitan information system from where it was gotten

THE COURT: Mr. McClain. Mr. McClain. That is the person responsible for doing everything, right there.

Mr. McCLAIN: And he listed this with the other agent. This was in cooperation with the agent.

And according to the according to listing

THE COURT: Mr. McClain, I think you're in trouble.

Mr. McCLAIN: I suggest, Your Honor, that we go directly to the Grievance Commission with this, Your Honor. Because they have to also look into what has happened here and that he rules have not been

THE COURT: Mr. McClain.

Mr. McCLAIN: Yes, Your Honor?

THE COURT: I think you're in trouble.

Mr. McCLAIN: Let's go to the Grievance Commission. I m already there.

THE COURT: Mr. McClain.

Mr. McCLAIN: Yes, Your Honor.

THE COURT: For the life of me, I don't see how you could sign a retainer agreement, charge a person an hourly fee, or flat fee, retainer, represent them in court, then say, Well, I'll get the house transferred over to you. You re going to get refinancing. And then you take a percentage of refinance.

Mr. McCLAIN: in lieu of fees, yes, your Honor. In lieu in lieu of legal fees. Yes, Your Honor. Your Honor, I would like to establish , for the record, that I don t think my client should be prejudiced because of your past experience with me that preceded this case. That had to do with other cases. And it appears that my client is going to be prejudiced by your decisions here. And I don't wish that my client be prejudiced by what your knowledge is of my legal practices, Your Honor.

So for the record, I would like to state that my client is being prejudiced by the statements that you are making here against me her today. And I would volunteer that this go directly to the Grievance

Commission. If you don't do it, I will. Because they need to look behind the rules here that have not been addressed. The rules control you I'm sorry, Your Honor. They control the Court. And they control those who deal with the Court. And they speak for themselves, Your Honor.

THE COURT: Mr. McClain

Mr. McCLAIN: Yes, Your Honor.

THE COURT: I just have a question regarding your representing Mr. Hamilton for a fee.

Mr. McCLAIN: Yes, Your Honor.

THE COURT: when did you stop representing for a fee and decide to get a percentage?

Mr. McCLAIN: When it was presented for sale, and I and I read that I'm a member of the Metropolitan Regional Information system as a real estate broker. And being that I'm licensed as a broker, since since these monies would have to be paid anyway, in a way of a real estate commission, then it only seemed logical that in order to reduce my client s fees since the have to be paid any way that they be paid through the sale of the property.

THE COURT: To you?

Mr. McCLAIN: That reduce that reduces --

THE COURT: To you?

Mr. McCLAIN: His fees.

THE COURT: Yes, Your Honor

Mr. McCLAIN: Yes, Your Honor, to my company. Geoplex real estate, Your Honor.

THE COURT: And what did you do the refinancing the property?

Mr. McCLAIN: Yes. Well, I wrote the contract. I negotiated the contract. I talked to the Trustee at length. I went to his office. We discussed it. We

discussed what had to be presented in the co-contract. He was very aware of my entering as a broker in this case for commission. There was no attempt to cover that up, Your Honor. And I would like to have a determination made today, since I have not received any compensation yet out of this matter, that if I am to receive a that you take a stand as to whether or not I am to receive compensation.

Your Honor. Your Honor, it doesn't add one penny to my pocket. It doesn't add anything at all.

THE COURT: What are you talking? I have no idea what you re talking about.

Mr. McCLAIN: I'm talking about by me acting as an agent in this case does not require my client to pay any more. And I don t get any any more dollars, Your Honor. It is just getting it is just getting fees in a different form.

Now, if I m wrong, Your Honor, then, like I say, I want this to go to the Grievance Commission now.

THE COURT: Mr. McClain, you know you're wrong. Wait. Calm down. You're wrong. Now, you re saying you re not getting money, but you re getting money because you were charging a fee to represent him in a case. You're wrong.

Mr. McCLAIN: They re not duplicate fees, Your Honor.THE COURT: Maybe I misunderstand when you say a settlement took place. That means the case is over. It means the house has been sold. That is what I understand the settlement to be.

Mr. AWOJOBI: There was no settlement, Your Honor.

THE COURT: Isn't that what a settlement is?

Mr. AWOJOBI: But there was no settlement.

THE COURT: Isn't that what a settlement is?

Mr. AWOJOBI: Yes.

THE COURT: So when I read the date, January 27 it says your are aware that Mr. Hamilton settled the contract, not was going to

Mr. AWOJOBI: Your Honor, Mr. McClain has been going back and forth on this. He just wrote a letter. I don't know what he meant. I just put it aside. It means nothing to me. I just discounted it. It meant absolutely nothing to me because I know there is no settlement if I don t go there. There is no settlement if I do not approve it as the Trustee.

So he just wrote me a letter and said they were ready to do settlement on the 25th. And I was never there. I was informed of anything. I have to approve it. If it goes after work, when Mr. Hamilton, when Mr. McClain came to my host office and offered 250,000, we sat down, and we looked at it together.

I later learned from him that he was going to charge to represent as an agent. So I called Mr. Kelting and said, What is this? And that is when Mr. Kelting filed a motion before the Court.

We have had a lot of problems with this thing. And I was ready to sell to Mr. Hamilton to just forgo any other legal wranglings. But I would not sell for less than the contract that I have from somebody else. As a fiduciary, I cannot sell for less.

I'm ready to sell to Mr. Hamilton. I've been ready to sell to Mr. Hamilton forever. But I have other people who are ready to purchase this property. We had to file a motion before the Court before Mr. Hamilton would let them appraise the property.

Mr. HAMILTON: Your Honor. I haven't had a chance to fairly make my full statement. According to what Mr. Awojobi just said, just now, I would like to

show you my loan agreement from the

THE COURT: It has nothing to do with anything. The loan agreement has nothing to do with anything.

Mr. HAMILTON: To purchase the home, Your Honor.

THE COURT: It has nothing to do with anything.

Mr. McCLAIN: Your Honor, the contract does refer to MLS Number PG-49182200.

THE COURT: What does that have do with anything?

Mr. McCLAIN: That's has to do with stating I'm to charge him a commission. That's spelled out in the listing itself, Your Honor.

THE COURT: Mr. McClain

Mr. McCLAIN: Yes.

THE COURT: Your client was talking. I don't know what that has to do with anything. As Ms. Johnson says, can you all go home and get this proceeding over so she can stop paying legal fees? She is the one who has been harmed, more than anybody else, in these proceedings.

Mr. McCLAIN: Your Honor, I suggest we take it directly to review for another authority, either for Grievance Commission or and administrative judge.

THE COURT: what are you talking about, Mr. McClain? Really. I dont follow you most of the time. And this is one time I have no idea what you're talking about. I have no idea.

Just so the record is clear, Mr. McClain has indicated that his client was being prejudiced by this member of the bench because of the member of the bench prior knowledge of strike that by this member

of the bench sanctioned in this case for filing pursuant to 1-341 where the courts found that Mr. McClain had filed pleadings. In fact, one was filed, styled a motion to alter or amend, which contained nothing different than what had been filed previously, and it did not give the Court any basis for the filing of the document.

What has happened today, the more Mr. McClain has talked, and the more the Court has listened to everybody else, it is clear that Mr. McClain did not heed the sanction in the prior case, did not heed or listen to what the Court said in October, 2004, where Mr. McClain and his client were sanctioned $2,200.

It is clear, Mr. McClain is going to practice law the way he wants to do it, no matter who his client might be or no matter what the judge may say in the case, or no matter what the case may dictate.

For the record, the request I didn't hear one, but I'm going to conclude that there was a request for recusal. The request to recuse is denied. Is there anything else you wan to tell the court?

Mr. HAMILTON: Well, Your Honor, I have been interrupted

THE COURT: I strongly suggest you speak with your lawyer. If you want to talk, you can talk.

Mr. HAMILTON: Well, I have been interrupted ever since I got started, I've been interrupted.

THE COURT: You probably shouldn't be talking. You should probably speak with your lawyer. But if you want to talk, talk. I'll listen to you. I'll hear you.

Mr. HAMILTON: well, Your Honor, I'm just trying to, you know, bring things to the light where

you understand exactly what has been going on. He mentioned about the fact that Ms. Johnson moved out of the house. She has been paying. It was all voluntarily. I have statements here showing that she wanted out. She moved out of the house voluntarily. She wasn't forced. I tried to make some arrangements with her. But that was her choice to do so.

Your Honor, the property was appraised by Mr. Al Jobsty at one point for the $200,000. Yet he put it on the market for 280.

The house could not appraise for that kind of money. And it's been hard to get a loan for that type of money, Your Honor.

THE COURT: Hard for who to get a loan?

Mr. HAMILTON: For me. I am a joint tenant. I am on title of the property. I'm only sating things that I've been informed of when it comes to the property. I'm on the deed of the property. From what I understand, I have the priority, what Mr. McClain was stating, priority, to first ownership of the property. And basically, that is what we have been trying to do is just deal with my rights as a joint ownership of the property.

So basically, according to basically that is where we are at, Your Honor, is just trying to get the Court to recognize the fact that I am a joint ownership. If, all fair, I have the opportunity to buy Ms. Johnson out off what she is asking for. I am trying to do so.

I have a loan agreement so that can be done. My lender is here to verify that fact, that we re trying to go forward in settling this problems with Ms. Johnson.

The lender and Awojobi, the Trustee, had made

verbal contact about me purchasing the property for the 228. He had the property appraised, at one point back, in July 14, 02 for $100,000. My appraisal I had it appraised twice, Your Honor,

And the second appraisal is now December the 20th, 04, at 228. The Trustee and the lender had made a verbal agreement

Mr. KELTING: Objection.

Mr. HAMILTON: that I could purchase the property--

THE COURT: Sustained.

Mr. HAMITON: for the 228.

Mr. KELTING: Move to strike.

THE COURT: Stricken

Mr. HAMILTON: And then the lender is asking for the trustee to remove something on this contract - -

Mr. KELTING: I object, Your Honor.

Mr. HAMILTON: that--

THE COURT: Sustained

Mr. KELTING: Move to strike everything that he said for the last two minutes. He hasn't said anything relevant to this case, Your Honor.

THE COURT: He hasn't. But he has. He has said a lot of things that is relevant to one issues jointly and severally.

Mr. KELTING: Yes.

THE COURT: It could have been individually. It could have been individually.

Mr. HAMILTON: Your Honor, my lender made contact with the Trustee to in order for this contract to be completed, that it had to certain things had to be removed because of the conflict with how it should be worded.

If I m refinancing the property, then, eliminate the buying status.

THE COURT: Mr. Hamilton, what you're saying has absolutely nothing to do with why we're here today. I take that back. It does to the extent that what you have told the Court of the--

Mr. HAMILTON: Yes, Your Honor.

THE COURT: You have been encouraging and telling your lawyer to file these things with the Court. And you have been an integral part of this property not being sold prior to today.

Mr. HAMILTON: Your Honor. I have been this is my first time ever being in ownership of a property. This is my first time. So everything that I have been explaining to you, I have been taught. And yeah, I've been informed of a lot of these proceedings. So I'm jut only speaking of what I have been informed.

THE COURT: Mr. Hamilton, I said it all along. One person is being hurt more so than anybody else. And that is Ms. Johnson. I don't know what resentment you may have. I don't know what bitterness that may have resulted from this case coming to court. But it is clear

Mr. HAMILTON: I have no bitterness, Your Honor. Basically, my biggest thing is that I was never aware. It is because something that I wanted to do. I wanted to address the Court about this whole court matter. I know, you know, I was waiting for the opportunity to appear in court so that Ms. Johnson and I could fairly resolve our issues pertaining to the property.

THE COURT: You don't have to come to court to resolve the issues.

Mr. HAMILTON: Excuse me?

THE COURT: You come to court to litigate matters. You fairly resolve the issues when your lawyers and everybody get together. When you come to court and I hear the case, that is because you have not resolved them.

Mr. HAMILTON: I'm telling Your Honor when we first started this whole thing, I've gone through great length to prove my point.

THE COURT: And what point is that?

Mr. HAMILTON: That I was never aware of the fact to come to court pertaining to this, from the start.

THE COURT: I have no idea what you re talking about, Mr. Hamilton. But what I said earlier, what you've led this
Court to conclude, and I do find that the filings that Mr. McClain made, you knew, and you encouraged, and you condoned them.

And it sounds like you may have really pushed him to file a number of these pleadings. And it sounds like all of this has been done, because no matter what everybody else is doing, you are saying, you going to keep this property and nobody else is going to get it. Nobody else is going to buy it.

Mr. Hamilton: that is not the case, Your Honor, I have a check here showing that I put up $5,000 towards the contract on the property.

Mr. McClain: Your Honor, in order to assist the Court, and in order to attempt to properly practice law, I did what any attorney would do in this case. I used a sample of an almost identical case where a Trustee was involved.

THE COURT: Mr. McClain Mr. McClain.

Mr. McCLAIN: The Trustee did sell the property, Your Honor, before it was listed and when it was appraised, Your Honor.

THE COURT: Mr. McClain Mr. McClain.

Mr. McCLAIN: Yes, Your Honor.

THE COURT: I closed my mouth because I was sick and tired of your client interrupting me every time I said something. I want your client to finish saying whatever he has to say, because he is still pulling paper. And every time I say something, he starts talking again and interrupting me.

Mr. McCLAIN: I defer to him.

THE COURT: And I thought you would know a little better. It took me five times to say, Mr. McClain. And as to you, it was only when your client nudged you that you stopped talking while I was trying to get you to stop talking. You must get this case over. We have been going on now for the past hour now.

Mr. McCLAIN: May I give you some, what I think is pertinent information, Your Honor? I gave to the Trustee a sample of a sale similar to this, circumstance almost identical. Paul Champion is the Trustee. There was an order to sell the property. The property was purchased --

THE COURT: Mr. McClain. Mr. McClain

Mr. McCLAIN: Yes, Your Honor.

THE COURT: We re here because of what you and your client have done. There has been a lot of filings in this case that should not have occurred.

Mr. McCLAIN: And one was a sample to Trustee of the sale, similar to this, where the Trustee, once he got the appraisal, reduced the price to the appraisal amount, placed the appraisal in the court,

the property went to settlement, and then the Trustee gave a Report of Sale.

He followed the rules. And in each case, he quoted the rules that were done. I tried to assist to get this done, Your Honor. He didn't place an appraisal in the report, so I placed an appraisal in the report whether or not the Court wants to use that. But if the Trustee had done what he wanted to do, we wouldn't be here today, Your Honor.

THE COURT: Mr. McClain, you pointed fingers. Everybody is always doing something wrong. You re never doing anything wrong.

You re standing for what reason?

Mr. AWOJOBI: Yes, Your Honor.The appraisal Mr. McClain is talking about, he seems to believe that if I have an appraisal for $200,000, I have an obligation to sell for $200,000.

An appraisal is a guide. If I have a price that is better than the appraisal, I have an obligation to take the price. And he seems to believe that because I had an appraisal for 200 when I disclosed to the Court when I filed my first motion to compel, I had my appraisal for $200,000.

And I had property listed. I got contracts. This is the third one. That is more than an appraisal. I had the appraisal for 200. Yet I got the property listed for $280,000. Why? I was trying to get the best price I could get. And I got a price that is far more than the appraisal.

The appraisal is a guide. He seems to believe that once I have a $200,000 appraisal, I must now turn around and sell to Mr. Hamilton for 200,000. No, Your Honor.

Mr. McCLAIN: 228,000, sir.

Mr. AWOJOBI: Mr. Hamilton, himself, gave me a contract for 250,000. He gave me it is before Your Honor. It is Exhibit C. He gave a contract for 250,000. Why? Because he believed the property would go for 250,000. He was matching the contract that I had. He agreed to 250,000. Then he turns around and says no. It is not 228,000, because he couldn't get financing. He couldn't get it. But the house came back for that price.

If the Court is willing for me to sell to them for 228, I will work with him. I've done everything to assist Mr. Hamilton. I've spoken with his lender. I don't have an obligation to do that. I don't have an obligation to. I'm talking to his lender all the time. I don t have the obligation. I just want the person with the money to come and buy it.

If he has the money, let him buy it. We scheduled settlement, and on the day of settlement, on the 25th of February, I called his lender, who now tells me he had to take it out of MLS. That s when I got pissed off. Since October, that's when I said, okay, this is it. So I now went on to two other people and said, Are you ready? Are you ready?

Your Honor, they have gone to the property. They appraised it. They have mold there. They secured the person who is going to clean up the mold. I have the estimate here. Everything is ready to go to settlement now with a better price, because Ms. Johnson, I also have a duty to ms. Johnson, to make sure I get the best price for her.

THE COURT: Okay

Mr. AWOJOBI: I am ready to sell to Mr. Hamilton if he is ready. I've been at this for so long.

THE COURT: Okay.

Mr. McCLAIN: Your Honor, the contract specifies

THE COURT: Excuse me.

Mr. KELTING: This is my last minute of talking in this case. And I will not speak again, Your Honor, except to thank you for your time.

I said earlier $10,000. Based on what I heard today, that is not enough. And I'm asking for more. The amount of fees over and above what you sanctioned Mr. McClain and his client already is $12,000. I would ask for that.

Since October, when you ordered this property sold, there was a contract in place for 4209,000. My client has had to make five mortgage payments totaling two mortgage payments that she shouldn't have to make. That is 3250, Your Honor.

And because of the delays engendered by Mr. McClain and his client, my client lost $7,000 in equity in the case. The sales price from 209 to 245. And I ask for that, as well. That is all I have to say, and I'll thank you.

Mr. McClain: Your Honor, the contract states that Mr. Hamilton is to refinance $228,000.

It is in the body of the contract itself. It speaks for itself. As to the efforts for sanctions in the amount of $12,000, he jumped from motion one all the way down to all of the other motions.

THE COURT: What are you talking about?

Mr. McCLAIN: He is asking for sanctions

THE COURT: He has been asking for sanctions. That is the first thing he said.

Mr. McCLAIN: to include all of these motions which haven t been heard.

THE COURT: They are being heard now Mr.

McCLAIN, like I told you earlier, you lose me most of the time.

Mr. McCLAIN: Yes, Your Honor.

THE COURT: And I have been hearing everything everybody has been saying, and in the past ten minutes, your client has stood up and sat down ten times.

I have no idea why he is standing or sitting. I know why he is sitting. But he stands. Now he stood up again.

Mr. HAMILTON: well, Your Honor, I just is it all right to speak, Your Honor?

THE COURT: As soon as you start, you lawyer is going to interrupt you. He is going to start talking again, then I'm listening to you going back and forth.

Sir, one last time, you re standing for what reason?

Mr. HAMILTON: About the mold issue, Your Honor. He claims that I caused the mold in the house. That is not true.

Ms. Johnson said there is water that had been coming into the house since we had been there. We had to throw out several items because of water coming into the house. So for him to make the statement that I caused the mold is not true, Your Honor.

Mr. McCLAIN: May I, Your Honor?

THE COURT: I knew you were going to say something. I told your client as soon as what is it, sir?

Mr. McCLAIN: Included in these motions is the Respondent s motion for Trustee to provide appraisal.

Are you considering sanctions for requesting that motion when that is required by the rule, your Honor?

THE COURT: I'm considering all, everything that is listed in here. I'm having to hear now everything. So does anybody else have anything else you want to tell me? One through seven. I'm listening to you.

Mr. McCLAIN: There s a Respondent s request for sanctions, Your Honor. That is Motion Number 3.

And this was based upon the filing of the Petitioner, whereby we had to respond to that. And reason was given for us filing the request for sanctions on the part of the Petitioner, because the Petitioner admitted that they would allow the property to be sold to Mr. Hamilton as a refinance. And then, he turns around and says that it shouldn't be sold to him as a refinance, which gets back to Motion Number 1, the emergency motion to allow Respondents priority settlement. The intent is important. And the intent here was to have the Court to respond and allow him to settle, because the Court had not responded to Motion Number 1.

THE COURT: Wait. Wait. Wait. Wait. The intent in filing your motion?

Mr. McCLAIN: Yes.

THE COURT: Because the Court had not responded? That is the first thing that was filed after the Court s ruling.

Mr. McCLAIN: However, the Court had not acted upon the motion.

THE COURT: That was the first thing that was filed, Mr. McClain.

Mr. McCIAIN: The emergency motion?

THE COURT: No. No. No. No. Your motion, Number 1.

Mr. McCLAIN: Correct.

THE COURT: That is the first thing that was filed. And you re speaking of the intent in filing that

Mr. McCLAIN: The intent of filing Motion Number 5, the Respondent's emergency motion to allow the Respondent priority to settle. The motion to amend was to allow priority, the priority to sell to Mr. Hamilton.

The motion for Number 5, was the priority to settle, because he had entered into a contract. These were the purpose of these, Your Honor, was to get the matter settled. It couldn't be settled based upon the question of appraisal and the question of price. And if Your Honor will make a determination, then sir it is not in the best interest of Mr. Hamilton, I think it is within his rights to file an interlocutory appeal.

THE COURT: What does that have to do with anything? I m missing it. What does that have to do with anything? I can't see what that has to do with the question of priority.

Wait. Wait. Wait. Wait. What does his right to file an interlocutory appeal have to do with anything we are doing today? I'm missing something.

Mr. McCLAIN: In an effort to protect Mr. Hamiltons rights, Your Honor.

THE COURT: What does that have to do with what we are doing today?

Mr. McCLAIN: I guess maybe the Court could interpret that as notice.

THE COURT: What notice?

Mr. McCLAIN: Of the interlocutory appeal rights.

THE COURT: I heard you say that, but just because you're saying interlocutory appeal doesn't mean anything. I ask you again.

What does that have to do with what we are dealing with?

Mr. McCLAIN: Maybe nothing, if your Honor decides that it has nothing to with it.

THE COURT: I don't know. So I'm asking you.

Mr. McCLAIN: Well, I retract that statement, Your Honor.

THE COURT: Okay.

Mr. McCLAIN: may I continue?

THE COURT: That is what Mr. KElting is trying to get you to retract all the things you filed.

Mr. McCLAIN: And he was very grateful that I had filed the voluntary dismissal in the Court of Appeals.

THE COURT: Your client should have been very grateful.

Mr. McCLAIN: I understand you position, Your Honor. May I get back to the emergency motion?

THE COURT: Do not repeat one word you've said earlier, Mr. McClain. You were about to speak. And as I said earlier, do not repeat anything ycu've already said, sir.

Mr. McCLAIN: The request to stay transfer title to third party purchaser was in conjunction with protecting Mr. Hamilton's rights, which are interpreted as having a priority, first priority to purchase the property as a joint tenant and tenants in possession.

Your Honor, if I may, Mr. Lenard Thompson, who is with the lending company that has obligated at all times to lend Mr. Hamilton the necessary funds to purchase this property, and within the purview that the words of the contract itself.

The contract is contingent upon a loan. And

being it is contingent upon a loan, I think it is valuable to the Court if, one, I could render to the Court a letter from Mr. Thompson representing his efforts to bring this to a conclusion and have the Court to question Mr. Thompson on any aspect of the loan on this property and the settlement on this property. If I may, Your Honor.

THE COURT: I don't need that, Mr. McClain.

Mr. McCLAIN: Thank you, Your Honor.

Mr. AWOJOBI: For the record, Your Honor, if I m allowed to say one word.

THE COURT: Okay.

Mr. AWOJOBI: If this property is no longer available for Mr. Hamilton, I'm asking the Court to ratify my sale. If he has an objection to that Report of Sale, it can go ahead. But the property is no longer available. I guess I can go to settlement and then file.

If Mr.Hamilton wants to, he can go to settlement and then file with the auditor.

Mr. McCLAIN: We would object, Your Honor, to the report of Sale as being incorrect and untimely, according to your order and according to the rules, as specified for private sale.

THE COURT: Okay. What is the mortgage on the property?

Mr. AWOJOBI: It is about 140,000, something like that.

THE COURT: Thank you.

You know, I see this case a lot like family law matters. As a family law matter, you can do one or two things I believe. When you continue to come back and forth to court, and the parties are unable to resolve the matter, such as this, that should have been resolved, then I tell the litigants in the family

law matter, I think you make a conscious decision to send your kids to college or the lawyer's kids to college.

Because the parties have been unable to resolve this case, and it had to be filed, the parties are going to lose somewhere around 50,000 $75,000. The mortgage, around 140. It sells for 250.

I m going to have $110,00 left. Then you're going to try to subtract another six to ten percent for the price of selling the house.

All three will be somewhere around $95,000. The lawyers get 15,000 a piece, probably, from all the time and effort that has been spent in this case. That is another 30,000.

Mr. McCLAIN: I haven't charged nearly enough Your Honor.

THE COURT: Mr. McClain, as I indicated, I have no doubt that you re going to do things your way. I sat here, after everybody finished standing and talking, to make certain that no one else had anything else to say before I started to say something, because I was absolutely certain that as soon as I said something, that you were going to say something. And I was right.

This is not the time where I'm looking for any comments from anyone. I have listened to everybody. I've been about as patient as I could be over the past hour and 30 minutes in giving everybody an opportunity to say everything, even when 90 percent of the things that have been stated are totally irrelevant for what we re here today to do.

So the parties went from selling the house where they could have realized $110,000 in net equity, to walking away with maybe realizing 50 to

$60,000, as opposed to having 50 to $60,000 a piece. There may be $50,000 total to be divided now.

What the Plaintiff Petitioner has asked the Court to do is judge. The only thing I came here to do was, we could not agree as to what should happen with the home. Since we could not agree, we could not agree to have a real estate agent list the house for sale, Mr. Hamilton would not agree with anything that I was proposing. I could not agree with what he was proposing, appoint a Trustee and have the house sold. That is all Ms. Johnson came to Court to do. And then I asked the Court to divided the proceeds. I'll divide it equally.

Now, we do know that the Court has already sanctioned Mr. Hamilton and Attorney McClain in the amount of $2200. That is going to come from whatever proceeds Mr. Hamilton may get.

Now, Ms. Johnson is saying, Judge, you made, you decided it back in October. This case should have been over with. The house should have been sold. I should have my own money. I should have paid my lawyer his money by the 1st of November.

However, guess what? I should have had the money in my pocket by the 1st of November.

Guess what? Mr. Hamilton and Mr. McClain came to Court and filed something on the 1st of November. And it s been what I would conclude, and probably conclude, this thing has been spiraling out of control ever since.

Now, as a result of that, we have lost $14,000. We have gone from 259 down to 245. We lost $14,000.

Not only that, now we have had to go and have reduced by another five because of mold in the house.

And Judge, why should I be penalized? Why

should I lose my part of those proceeds because of what Mr. Hamilton and Mr. McClain want to do? He wants to do it. Let him do it. But he could have had his money. I could have had my money. He could have refinanced and stopped these proceedings a long time ago and given me my money.

But that is not what he wanted. He wanted to continue to come to court, file proceedings after proceedings. Now, Judge, since October, we have incurred as Ms. Johnson will contend anther $12,230 in legal fees. If Mr. Hamilton and Mr, McClain hade done what they were supposed to do, at best, probably, I would have had to pay another $250, maybe $300, to my lawyer for three hours in reviewing documents and sent him on his way and should not have to see this man again.

But I don't know whether he looking to frustrate me. I don't know whether he looking to frustrate me. But as Ms. Johnson would probably contend, they re darn sure frustrating her. Not only frustrated Ms. Johnson, you have frustrated the efforts of the Trustee to do the things that the Court directed him to do. But, Ms. Johnson said, yeah, that is what the Trustee was appointed to do. That is all well and good.

But why should she have to pay for what Mr. Hamilton and what Mr. McClain have done, when they have had no basis to anything that they have done in their coming to court to ask me to do?

Since there was no basis in making those requests, why should I. Ms. Johnson contends, pay the additional $12,230? Ms. Johnson s position, as has been stated to the Court Mr. Hamilton knew what he was doing. Mr. Hamilton knew he was

wrong. And equally more importantly, if not more important, is the fact that Mr. McClain knew, or should have known, there was no justification in the filings that he has done.

There was no justification in many of the actions that Mr. McClain and Mr. Hamilton took, included but not limited to the filing of the motion to alter or amend, and scheduled a settlement on the property when the Trustee appointed by the Court was not participating in it, all in an attempt to force the Trustee to sell the property to Mr. Hamilton at a price less than someone on the open market is willing to pay for it.

Maybe I m wrong in my assessment. But I cannot, in good conscience, no matter how much I may dislike a person, could see myself and looking at it, and knowing I would lose, lose 20 to $50,000.

Maybe I m wrong. Maybe I believe in saving everywhere I could save, but when you look and see that this matter has been going on since 2003, there must be some finality to this case. I'm absolutely certain absolutely certain this case is not going to be over with today.

Mr. McClain has made it all but clear to the Court, no matter what the Courts decides, no matter what is in the best interest of the parties, he is going to do what he need to do. I don't know what he is alluding to when he mentioned the interlocutory appeal. But he told the Court that the trustee was out of order and tating the things that he stated to the Court. I'm absolutely certain, from watching the actions of Mr. Hamilton and listening to what Mr. Hamilton said, and the way in which you said these things, it is not over with, no matter what I might

decide, no matter what Ms. Johnson wants.

And if that had happened before this case was filed in 2003, I would never would have seen you. But because you couldn't agree on that, from my guestimation, you all have lost $60,000.

And it is wrong. It is wrong what has happened in this case. It is wrong the approach that Mr. Hamilton has taken. It is wrong the approach that Attorney McClain has taken. And the Court will find that the filings, particular Respondent s motion to alter and amend, was without merit.

Madam Clerk, for the record, Respondent s Motion to Alter or Amend Judgment, docket entry, denied.

Docket entry, Petitioner s Emergency Motion for Appropriate and expedited Relief, moot.

The Petitioner has filed a Request for Sanctions Pursuant to Maryland Rule 1-341, granted.

Respondent's request for Sanctions Pursuant to Maryland Rule 1-341, denied.

Madam Clerk, Respondent s Emergency Motion to Allow Respondent Priority to Settle with trustee or to stay Transfer Title to Third Party Purchaser, denied.

Mr. LENARD THOMPSON: I m gone.

THE COURT: Sir? Have a seat in court. I don t know where you come from or what you do. I have been patient with everyone who has participated in these proceedings. You don t walk in and out of court and talk. You may not like the Court s ruling, but so be it. If I've been unclear with anyone, I'll make myself absolutely clear now.

The next person to do or say anything to interrupt these proceedings will be held in contempt

and will not go home.

Please, whomever is unclear about what I just stated, say something, otherwise I'll conclude that everybody understood the statement.

Mr. McClain, you standing for what reason?

Mr. McClain: To respond as to whether or not what you have said was clear and understood, Your Honor.Could the Court please make clear to me whether or not my objections to the sanctions are understood or registered with the Court?

THE COURT: I don't know whether your statement I'm just lost. I don't know whether your statement this is not responsive to what I stated.

I don't know whether it is an attempt to frustrate the Court s decision, or whether that is indicative of the manner in which you filed pleadings, or filed documents with the Court, because it has absolutely zero to do with my statement that if someone does anything to interrupt these proceedings, or disturb these proceedings, in any way, that person will be found in contempt. And your exceptions to, or objections to, the Court finding that there was merit in granting the Petitioner s Motion for Sanctions Pursuant to Maryland 1-342, as matter of fact, I would, in fact, find that that is indicative and representative of the kinds of pleadings that have been files and what has happened in this case. I just believe counsel is going to do what matters to the way he wants to do it and so will Mr. Hamilton.

Madam Clerk, docket entry, Respondent s Motion for Trustee to Provide Appraisal, denied.

In addition, we have another motion by the Petitioner to have Respondent held in contempt and for sanctions against Respondent and Respondent s

counsel. Madam Clerk, docket entry, granted in part, denied in part.

Request to hold Respondent and counsel in contempt, denied. Request for sanctions, granted. Also, Madam Clerk, there is a Petitioner's amended request for sanctions. Granted.

Rule 1-341, bad faith, unjustified proceeding, In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification the court may require the offending party or the attorney advising the conduct of both of them to pay the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorney s fees, incurred by the adverse party in opposing it.

That is the reason why we we re here. The Court will find that the actions of Mr. Hamilton and Attorney McClain were unjustified, and the actions were in bad faith.

Thank you. It is clear that Mr. McClain and Mr. Hamilton did not get it, in October, when the Court sanctioned them jointly and severally in the amount of $2,200. It is clear Mr. Hamilton and Mr, McClain completely thumbed their nose when the Court sanctioned them at that time. Maybe the appropriate disposition is, or was, to find them in contempt and impose a sanction in a dollar amount.

But one would hope that an attorney, in evaluating, or looking at a case, would advise a client of, well, you know, maybe I m too close, I've gotten to be too close in these proceedings, and maybe you should take another look or have someone else review your case.

But a lot of what Mr. Hamilton says he has done a lot based upon his learning of things from Mr. McClain. And the Court is convinced that Mr. McClain has his own ways of doing matters.

Yes, the Court may sanction someone for arriving to court late, or substantially late, or not showing up, in causing a proceedings to be delayed or continued. But I do not know any judge in any jurisdiction who looks forward to issuing sanctions pursuant to our Rule 1-341, or bad faith litigation, whatever the rule may be in other jurisdictions. Judges don t look forward to that. And when it is done, you can maybe ask, What happened here? Initially sanction someone so they can get a message, or understand that the Court means business, and it would not happen again.

The $2,200, whatever it was, did not phase Mr. Hamilton. It did not phase Mr. McClain one single bit. And the bad part of it, to this day, to this moment, I don t believe they comprehend what is going on or what should be occurring.

I'm fairly certain that Mr. Kelting had no idea or did not bargain for what he has gotten when he got in this case. And maybe he had some idea, because his client may have given some idea as to what she had incurred and encountered in trying to get Mr. Hamilton to agree to list the property for sale.

I am absolutely certain that the court-appointed Trustee, who just happened to be sitting in his office, minding his business, doing things, taking care of his practice, whatever he may have been doing, who knew the names of the parties, may not have know either of the attorneys, when the Court called to get him involved in assisting the Court to

sell his property, and he has indicated to the Court how ticked off he has been with Mr. Hamilton and Attorney mcClain because personally they want to do things their way.

Thus, the question is, what should be the appropriate sanction? And if there is to be one, whether it should be individually as to Mr. Hamilton, or individually as to Mr. McClain, or jointly and severally as to both.

Attorney Kelting asked the Court to strike, based on a lot of things that Mr. Hamilton stated, because they were irrelevant. He is probably right. But they were relevant to one big part of the puzzle.

His knowledge, his understanding, his encouragement, his participation in the filing of pleadings with the Court and in frustrating the efforts of the court- appointed Trustee to sell the property, and having Ms. Johnson incur the additional legal fees that she has incurred since October of this year, thus it shall be jointly and severally.

The Court will, in fact, find based upon the facts, based upon the statements made by Mr. Hamilton, and from his conduct, that he participated in and encouraged, and condoned, and knew of the filings of Mr. McClain, and including the motion to alter or amend all the other proceedings.

And the Court will find that either Mr. McClain knew, or he had a reason to know, the filings, the attempt to force a settlement, apparently while the court-appointed Trustee out of the country, and other matters that were baseless and without justification, it gets substantial, had no justification in his action.

And they were in bad faith. And the Court will,

in fact, Madam Clerk, order that the appropriate sanction in this case should be in the amount of $12,230.

Madam Clerk, there should be two separate judgment sheets, and that is jointly and severally. As to Attorney Charles McClain and the defendant slash Respondent in this matter.

Thus, Madam clerk, please enter judgment in favor of Barbara Johnson and against Attorney McClain and Mr. Hamilton joint and several. If it was not clear, I don t believe it was done there should be a judgement entered, and that will reduce the priority sanction amount to a judgment. I don't believe it had been, but we will reduce it, a separate judgement in the amount of $2,200 in favor of Barbara Johnson and against the Defendant Hamilton and McClain, jointly and severally.

Also, docket entry, the matter is referred to the auditor. And the Court accepts as received and accepts the Report of Sale that has been submitted by the court-appointed Trustee.

Anything further? Any and all other motions are now moot.

Mr. AWOJOBI: can I ask the Court to enter an order that would make Mr. Hamilton vacate the premises upon settlement?

THE COURT: well, I need someone to file the appropriate motion.

Mr. AWOJOBI: Yes, sir.

THE COURT: A motion for a writ of possession.

Mr. AWOJOBI: Okay.

THE COURT: That would be the appropriate. Once again, there is nothing but the amount of legal fees, because I'm fairly certain, Mrs. Johnson has to

respond. If it is filed, Attorney McClain is going to respond on behalf of Mr. Hamilton, which means we are going nowhere, back to square one.

Madam Clerk, any other matters that have not been resolves in this case that we are not aware of?

Counsel, is there anything else that has not be addressed by the Court?

Mr. KELTING: No, Your Honor. Thank you.

THE COURT: Attorney McClain, is there anything else that has not been addressed by the Court?

Mr. McCLAIN: None that I can recall at this time, Your Honor.

THE COURT: Court is now in recess.

(The proceeding was concluded at 1:00)

REPORTER S CERTIFICATE

I, Elizabeth S. Bingham, an Official Court reporter for the Circuit Court for Prince George s County, Maryland, do hereby certify that I stenographically recorded the proceedings in the matter of Barbara Johnson versus Gustav Hamilton, C.A.E. 03-14856, on March 17, 2005, before the Honorable Herman C. Dawson, Associate Judge,

I further certify that the page numbers one through seventy-nine constitute the official transcript of the proceedings as transcribed by me from my stenographic notes to the within typewritten matter in a complete and accurate manner.

In witness Whereof, I have affixed my signature this 25th day of April, 2005.

Elizabeth S. Bingham, RMR
Official Court reporter